

Request For Proposal

Child Welfare Services/Case Management System
Maintenance, Operation and Enhancement Project
RFP # HWDC-7012

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Appendix E

Development of Contract Language

1. General

These bidder instructions are provided to explain how the State's draft Contract is structured and how it may be modified to develop a mutually agreeable final Contract. Because no negotiations nor alterations (except as specified below) of the Contract are permitted subsequent to the last day to finalize contract language, it is imperative that bidders follow these instructions carefully in order to be fully responsive contractually to the requirements of the RFP.

Any Contract negotiations will be conducted according to the schedule of Key Action Dates listed in Section I of the RFP, that is, **before** Draft and Final Proposals are due. **After** receipt and evaluation of Final Proposals by the State, the State will modify Rider A of the Contract, in coordination with the Contractor, to incorporate, as appropriate, pertinent sections of the RFP and the Contractor's Final Proposal.

Note that, with this RFP, the State is conducting a pilot to allow each bidder to electronically annotate the draft Contract language. It is anticipated that this method will expedite the overall Contract negotiation process for this procurement. Please address any feedback on this pilot to the Procurement Division Official listed in Section I.E of the RFP.

Participation in this pilot is not mandatory. Any bidder choosing not to electronically annotate the draft Contract language shall submit by mail or courier to the Procurement Division Official listed in Section I.E of the RFP an annotated photocopy of this printed draft Contract along with a printed letter of transmittal that meets the requirements of Subparagraph 2.b below. Such a submission shall comply with the schedule described in Subparagraph 2.d below. No confirming copy of the bidder's printed submission will be returned to the bidder by the State. All other steps in the Contract negotiation process described herein apply.

2. Bidder Instructions to Prepare Proposed Contract Language Changes

- a. Annotate the electronic file of the draft Contract, as appropriate, at the place of each proposed change. The Contract file is provided in Microsoft Word 97 (SR-1) format and may be downloaded from the California State Contracts Register (CSCR). Note that the "Track Changes" feature of MS Word will automatically highlight edits made to the file; inserted text will be shown in italics, and deletions will be shown in strikethrough font (e.g., ~~strikethrough~~). As appropriate, include any modifications to the State's model contract provisions that your firm has previously negotiated with the Department of General Services Procurement Division and that your firm wishes to include in this Contract. **DO NOT INCLUDE ANY DOLLAR FIGURES.**
- b. Prepare a letter of transmittal that identifies each proposed change to be made to the draft Contract and that explains (except where the reason for the change is obvious) the rationale for the change. Failure to provide a rationale for each proposed change may result in an automatic denial by the State of the proposed change.

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- c. Save a file copy of the annotated draft Contract and your letter of transmittal for your files for use during subsequent communications with the State relative to the proposed changes to the draft Contract.
- d. Submit the transmittal letter and the annotated draft Contract by email to the Procurement Division Official listed in Section I.E. no later than the date indicated in the RFP's schedule of Key Action Dates. Early submission of the annotated draft Contract will facilitate the negotiation process.

Upon receipt, the Procurement Division Official will return by email to the sender a confirming copy of the original email message received and the attached files of the annotated draft Contract and the letter of transmittal. IF ANY DISCREPANCY IS DISCOVERED BETWEEN THE TRANSMITTAL LETTER AND THE ANNOTATED DRAFT CONTRACT FILES SUBMITTED TO THE STATE AND THE TRANSMITTAL LETTER AND THE ANNOTATED DRAFT CONTRACT FILES RETURNED BY THE STATE WITH THE CONFIRMING EMAIL MESSAGE, PLEASE CONTACT THE PROCUREMENT DIVISION OFFICIAL **IMMEDIATELY.**

- e. Proposed Contract language changes not submitted in the manner identified above may not be considered by the State and may be returned without review.

3. Contract Negotiation

Contract negotiation will be handled by telephone per the RFP's schedule of Key Action Dates. Upon receipt of the proposed Contract language changes, the State, in coordination with the U.S. Department of Health and Human Services, will review the bidders proposed changes to identify the acceptability of the proposed language. The bidder will be notified by email as to which portions, if any, of the proposed Contract language changes submitted are acceptable. If necessary, a meeting(s) between the bidder and the State may be arranged to resolve any differences.

Any approved modification(s) to the draft Contract language for this RFP that does not identify the particular bidder who requested it will be made available to all participating bidders shortly after the last day to finalize Contract language (per the Key Date schedule in Section I of the RFP). Approved Contract language changes will be distributed to all participating bidders.

All participating bidders shall submit the most current version of this Contract language as part of their Draft and Final Proposals (see RFP Section II.D.3, Approval of Proposed Contract).

4. Bidder Instructions to Prepare Contract for Final Proposal Submission

- a. Standard Agreement (STD. 2) Form

Fill in only the following items:

- Contractor's Federal Employer Identification Number (FEIN).
- Contractor's information identified in the box marked "CONTRACTOR". An original signature must appear on each original of this form submitted with the Final Proposal.

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b. Contract Riders

All Contract pricing tables shall be completed as part of each bidder's response to Section VI, COST, of the RFP and submitted as part of the sealed Volume 4. Refer to the instructions for responding to Section VI, COST, and Section VII, PROPOSAL FORMAT, of the RFP. When the Contract is awarded, the applicable cost tables will be transferred into the Contract to replace the pages identified in Riders B, C and I.

c. Completed Contract

The completed Contract to be submitted as Volume 2 with the Final Proposal consists of the signed Standard Agreement (STD. 2), Articles 1 through 4, and Riders A through I. The most current version of any page modified by addendum must be included.

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THE FOLLOWING TEXT WILL BE INCLUDED ON THE FACE OF THE STATE'S STANDARD AGREEMENT FORM 2

The purpose of this Contract is to promote and facilitate the use of a broad child welfare information systems strategy in California, as articulated by Federal policies related to Statewide Automated Child Welfare Information Systems (SACWIS). SACWIS is authorized as a part of Title IV-E of the Social Security Act. (See 45 CFR §§ 1355.50 et seq.) Towards this end, this Contract will secure information technology services and support for (1) the maintenance and operation of the California Child Welfare Services' Case Management System (CWS/CMS) for the Health and Human Services Agency Data Center (HSDC) (hereinafter referred to as "the State"), on behalf of the California Department of Social Services (CDSS), and the social services agency(ies) of California's fifty-eight (58) Counties- and (2) possible changes to or enhancements of the CWS/CMS that further SACWIS policies. Additionally, this Contract will serve as a vehicle to secure related information technology goods and services for the provision of Child Welfare Services.

The Contractor agrees to provide to the State those Guaranteed CWS/CMS services specified in the Riders attached to this Contract in accordance with the attached Article 1, General Terms and Conditions, Article 2, Contractor Certifications, Article 3, General Provisions for Doing Business with the State of California, and Article 4, General Provisions for Information Technology Contracts.

Also, the Contractor agrees to provide and the State may lease and/or purchase any and all or none of those Additional Exclusive and Additional Non-Exclusive goods and services specified herein. If such goods require installation, the Contractor agrees to furnish and install such goods at a site(s) designated by the State.

The term of this Contract shall be five (5) years, from _____ through _____.
The State reserves the option to extend this Contract, by amendment, for two (2) supplementary periods of one (1) year each.

The maximum amount of this Contract shall not exceed \$_____, consisting of
\$_____ for the Guaranteed fixed price tasks in Rider I, plus \$_____ (10%
of the fixed price tasks) set aside for payment of unanticipated tasks specifically authorized herein, plus
\$_____ set aside for payment of anticipated undefinitized services specifically authorized herein.

The following Riders are incorporated by reference and made a part hereof:

- Rider A Special Provisions and Contract-Specific Information
- Rider B List of Equipment (and Operating Software), Pricing and Allied Information, (Additional Non-Exclusive)
- Rider C List of Software (Other than Operating Software), Pricing and Allied Information, (Additional Non-Exclusive)
- Rider D Acceptance Testing Provisions
- Rider E Lease and/or Installment Purchase Provisions
- Rider F Maintenance Provisions
- Rider G Software License Provisions
- Rider H Training Provisions
- Rider I Scope of Services, Pricing and Allied Information, (Guaranteed, Additional Exclusive, and Additional Non-Exclusive)

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ARTICLE 1 GENERAL TERMS AND CONDITIONS

1. Approval

This Contract is of no force or effect until signed by both parties, and approved by both the U.S. Department of Health and Human Services and the California Department of General Services. Contractor may not commence performance until such approvals have been obtained.

2. Amendment

No amendment of this Contract shall be valid unless made in writing and signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties hereto. Contractor shall not be authorized to commence performance until such approval of the amendment has been obtained except as otherwise provided herein.

3. Unilateral Changes

- a. The Director of HHSDC or designee may, any time, by written Change Order, and without notice to sureties, if any, make changes within the general scope of this Contract in any one or more of the following: (1) description of services to be performed; (2) time of performance (i.e., hours of the day, days of the week, etc.); (3) place of performance of the services; (4) drawings, designs, or Specifications when the goods to be furnished are to be specifically manufactured for the State in accordance with the drawings, designs, or Specifications; (5) method of shipment or packing of goods; (6) place of delivery.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, whether or not changed by the Change Order, the State shall make an adjustment in the Contract price or delivery schedule or both based on the principle of reasonable value of the goods or services affected by the Change Order, and the Contract shall be amended in writing accordingly.
- c. The Contractor must assert its right to an adjustment under this provision in writing to the Director of HHSDC or designee within thirty (30) days after the date of receipt by Contractor of the written Change Order.
- d. If the Contractor's written request for adjustment includes the cost of property made obsolete or excess by the change, the Director of HHSDC or designee shall have the right to prescribe the manner of the disposition of the property.
- e. Failure to agree to any adjustment shall be a dispute under Paragraph 7, Disputes, in Article 1, General Terms and Conditions, of this Contract. However, nothing in this clause

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shall excuse the Contractor from proceeding with the Contract as changed.

4. Assignment

The State must consent in writing before the Contractor may assign this Contract, in whole or in part, or delegate its duties. Such assignment or delegation must be made by formal written amendment.

5. Audit

Contractor agrees that auditors from HHSDC, the California Department of General Services, the California Bureau of State Audits, the U.S Department of Health and Human Services, or their designated representative(s) shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract at any time during or after the performance of the Contract up to three (3) years after the termination and expiration of the Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896, and the Military and Veterans Code 999 et seq.)

6. Indemnification

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Contract.

7. Disputes

- a. The parties shall deal in good faith and attempt to resolve disputes informally.
- b. Should the State's and the Contractor's Project Executives (refer to Rider A for definition of terms) not be able to resolve any particular issue, a Steering Committee will be convened. The Steering Committee shall be comprised of, at a minimum, the following persons (or designees or successors thereof): the State's Project Executive, the Contractor's Project Executive, the Director of HHSDC, the Deputy Director of CDSS - Child and Family Services Division, and the executive to whom the Contractor's Project Executive reports. The Steering Committee will be convened within three (3) business

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days and use whatever resources it deems necessary to seek a rapid and just resolution to an issue within five (5) business days. A longer period is allowable if agreed to by all members of the Steering Committee.

The State or the Contractor shall submit to the Steering Committee a written demand regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. This written demand shall be fully supported by factual information. If such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by the executive to whom the Contractor's Project Executive reports indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable.

- c. In the event that the Steering Committee cannot resolve an issue within the time frame prescribed above, either party may make an appeal to the Deputy Director, Procurement Division of the Department of General Services or designee within five (5) business days.
 - d. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.
 - e. If either party has appealed to the Deputy Director, Procurement Division of the Department of General Services or designee per Article 1, General Terms and Conditions, Paragraph 7.c.1 above, any final decision of this appeal shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division of the Department of General Services or designee within five (5) business days. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
8. Rights and Remedies of State for Default
- a. Except as otherwise provided herein, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or inequity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.
 - b. Subject to the provisions of paragraph (e) below, in the event any goods or services furnished by the Contractor in the performance of this Contract should fail to conform to the Specifications herein, the State may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith or to correct the

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performance of services without expense to the State. It shall also be the duty of the Contractor within thirty (30) days after receipt of the State's Notice of Rejection to replace all such rejected Equipment, software, or service with others conforming to the Specifications herein without expense to the State. Equipment, software or services that have been rejected by the State are deemed not to have been accepted for purposes of payment pursuant to Rider A, Paragraph 7, Payment, and to have been a failure to perform an obligation pursuant to Rider A, Paragraph 8, Withholding from Payment.

- c. In addition to any other rights and remedies the State may have, the State may request Contractor, at Contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
 - d. Subject to the provisions of paragraph (e), in the event the Contractor shall fail to make prompt delivery as specified of any Equipment, software, or service, the State shall thereupon have the right to lease or purchase in the open market, in lieu thereof, a corresponding quantity of any such Equipment, software, or service and to deduct and/or withhold the difference between the price named in this Contract and the actual cost thereof to the State from any monies due or that may thereafter become due to the Contractor under this Contract or any other contract with the State.
 - e. Subject to the provisions of paragraph (f), in the event that the Contractor breaches any representation, warranty, agreement or obligation contained or referred to in this Contract, the State may terminate this Contract, either in whole or in part, with prior notice to the Contractor, provided that the Contractor has been given notice of such breach and there has been a failure to cure such breach within 30 days after receipt of such notice. If the State exercises this right to terminate either in whole or in part, by reason of default or breach of the Contractor, the Contractor shall be liable for any loss or damage sustained by the State in procuring any Equipment, software or service which the Contractor herein agreed to supply.
 - f. Transition-In. In the event the Contractor fails to complete Transition-In by the scheduled deadline and such failure causes the State to incur loss or damage, the Contractor shall be liable for one half the value of Transition-In, unless, at least 35 days before the scheduled deadline, Contractor notifies the State's Project Executive of the impending delay and the parties can mutually agree upon a revised deadline. If the Contractor fails to complete Transition-In by the revised deadline and such failure causes the State to incur loss or damage, the Contractor shall be liable for one half the value of Transition-In. If Contractor's delay is such that the State elects to terminate the Contract in accordance with Paragraph (d) above, the State reserves the right to exercise all the remedies for breach accorded by this Contract and the law.
9. Termination of Contract for Non-Availability of State Funds
- a. If the term of this Contract extends into fiscal years subsequent to the appropriation of funds for such purpose by the State Legislature, and if funds to effect such continued payment are not appropriated, Contractor agrees to take back any Equipment and software supplied under this Contract which the State identifies as unfunded, to terminate

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any services supplied to the State under this Contract, and to relieve the State of any further obligation therefor.

- b. State agrees that if the provision (a) above is invoked, Equipment shall be returned to Contractor in substantially the same condition in which it was delivered to the State, subject to normal wear and tear. State further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to the Contractor for expenses incurred for their assistance in such packing and crating.

10. Termination of Contract for Non-Availability of Federal Funds

It is mutually understood between the parties that this Contract has been written for the mutual benefit of both parties, before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Contract were executed after that determination was made.

This Contract is valid and enforceable only if sufficient funds are made available to the State by the U.S. Department of Health and Human Services for the purpose of this program for the fiscal year(s) covered by the term of this Contract. In addition, this Contract is subject to any additional restriction, limitation, or condition imposed by a federal agency or enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Contract in any manner.

The parties mutually agree that if a federal agency or the Congress does not appropriate sufficient funds for the program, the State shall have the option to terminate the Contract pursuant to the terms of the abovementioned clause, Termination of Contract for Non-Availability of State Funds, or amend the Contract to reflect any reduction in funds.

11. Termination for the Convenience of the State

- a. The State may terminate performance under this Contract for their convenience in whole or, from time to time, in part if the Director of HHSDC or designee determines that a termination is in the State's interest. The termination shall be delivered to the Contractor specifying the extent of termination and the effective date thereof. The parties agree that, except for the terminated portion of the Contract, the Contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded, and the Contract shall not be void.
- b. After receipt of a Notice of Termination, and except as directed by the Director of HHSDC or designee, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - 1) Stop work as specified in the Notice of Termination.
 - 2) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

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- 3) Terminate all subcontracts to the extent they relate to the work terminated.
 - 4) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this clause.
 - 5) As directed by the Director of HHSDC or designee, transfer title and deliver to the State (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the State.
 - 6) Complete performance of the work not terminated, and
 - 7) Take any action that may be necessary, or as the State may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the State has or may acquire an interest and to mitigate any potential damages or requests for adjustment or termination settlement to the maximum practical extent.
- c. At the completion of the Contractor's termination efforts, the Contractor may submit to the Director of HHSDC or designee a list, indicating quantity and quality of termination inventory not previously disposed of, and request instruction for disposition of the residual termination inventory.
 - d. After termination, the Contractor shall submit a final termination settlement proposal to the Director of HHSDC or designee in the form and with the certification prescribed by the Director of HHSDC or designee. The Contractor shall submit the proposal promptly but no later than ninety (90) days from the effective date of termination, unless extended in writing by the State upon written request of the Contractor within the ninety (90) day period. If the Contractor fails to submit the proposal within the time allowed, the Director of HHSDC or designee may determine an adjustment amount, if any, due to the Contractor, based on the principle of reasonable value of the goods or services affected by the termination, and pay the amount determined.
 - e. The Contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and storage, transportation and other costs incurred reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total Contract price as reduced by (1) the amount of payments previously made and (2) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount.

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- f. If the Contractor and the State fail to agree on the whole amount to be paid because of the termination of work, the State shall pay the Contractor the amounts determined by the State as follows, but without duplication of any amounts agreed on as set forth above:
 - 1) The Contract price for completed goods or services accepted, sold or acquired by the State but not previously paid for, adjusted for any saving of freight and other charges.
 - 2) The total of:
 - a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to goods or services paid or to be paid; and
 - b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g. Except for normal spoilage, and except to the extent that the State expressly assumed the risk of loss, the State shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Director of HHSDC or designee, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer.
- h. The Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated Contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.
- i. The Contractor shall have the right of appeal, under Article 1, Paragraph 7, Disputes, from any determination made by the State except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If the Director of HHSDC or designee has made a determination of the amount due, the State shall pay the Contractor (1) the amount determined if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on appeal. Following any attempted administrative resolution with the Director of HHSDC or designee, the Contractor may proceed in accordance with the Disputes clause.
- j. In arriving at the amount due the Contractor, there shall be deducted:
 - 1) All payments to the Contractor under the terminated portion of this Contract;

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- 2) Any claim which the State has against the Contractor under this or any other Contract,
 - 3) The agreed price for, or the proceeds of sale of, materials, goods, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the State.
- k. If the termination is partial, the Contractor may file a proposal with the Director of HHSDC or designee for an adjustment of the price(s) of the continued portion of the Contract. The Director of HHSDC or designee shall make any adjustment agreed upon based on the principle of reasonable value of the goods or services affected by the termination. Any proposal by the Contractor for an adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the Director of HHSDC or designee.
- l. The State may:
- 1) Under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the State believes that the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - 2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the State upon demand, together with interest computed at the rate established by the California Treasurer's Pooled Money Investment Fund Rate. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the State because of the circumstances.
- m. In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the State shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
- n. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the State, the U.S. Department of Health and Human Services, or their designees, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the State, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- o. After termination, in the case of a lease or installment purchase agreement executed as a

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result of this Contract, the State shall make whole the Contractor, Lessor or Lender, as appropriate, by taking the present value of the remaining payments at eighty percent (80%) of comparable term U.S. Treasury notes.

12. Procedures Applicable to All Terminations Regarding Property

After receipt of a notice of termination, and except as otherwise directed by the State, Contractor shall:

- a. Take such action as may be necessary, or as the State may direct, for the protection and preservation of all forms of property related to this Contract which is in the possession of Contractor and in which the State has an interest,
- b. Transfer title to State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State; and
- c. Provide written certification to State that Contractor has surrendered to State all such property.

13. Stop Work

- a. The State may, at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of ninety (90) days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - 1) Cancel the stop work order; or
 - 2) Terminate the work covered by the stop work order as provided for in Article 1, Paragraph 8, Rights and Remedies of the State for Default, or Article 1, Paragraph 11, Termination for Convenience of the State.
- b. If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an adjustment in the delivery schedule, the Contract price, or both, based on the principle of reasonable value of the goods or services affected by the stop work order, and the Contract shall be modified in writing accordingly, if:
 - 1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract;

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and

- 2) The Contractor asserts its right to such an adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the State decides that the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c. If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with Article 1, Paragraph 8, Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- d. If a stop work order is not canceled and the work covered by the stop work order is terminated by default, the State shall allow, by adjustment or otherwise, for costs incurred by the Contractor as a result of the stop work order, based on the reasonable value of the goods or services impacted thereby. However, such reasonable costs may be offset against amounts due the State as damages or otherwise.
- e. An appropriate adjustment may be made in any related Contract of the Contractor that provides for adjustment and is affected by any stop work order under this clause. The State shall not be liable to the Contractor for damages or loss of profits because of a stop work order issued under this clause.

14. Taxes

The State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales and use taxes on the services rendered or goods supplied pursuant to this Contract.

15. Time is of the Essence

Time is of the essence for the Contractor's performance of its obligations under this Contract.

16. Contractor's Power and Authority

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

17. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the State of California.

18. Covenant Against Gratuities

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The Contractor warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

19. Independent Contractor

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees of the State.

20. Nondiscrimination Clause (Std. 17A)

During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (including cancer), age, marital status, use of family and medical care leave and pregnancy disability leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.

This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

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ARTICLE 2 CONTRACTOR CERTIFICATIONS

1. Statement of Compliance

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103). Refer to Article 1, General Terms and Conditions, Paragraph 17.

2. Drug-Free Workplace

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (GC 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace,
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Provide that every employee who works on the proposed Contract will:
 - 1) receive a copy of the company's drug-free policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and the Contractor or grantee may be ineligible for award of any future State contracts if the Director of HHSDC or designee determines that any of the following has occurred: (1) the Contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. National Labor Relations Board

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Contractor certifies that no more than one (1) final, unappealable finding of contempt of court by a Federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296).

4. Workers' Compensation

Contractor certifies adherence with the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this Contract.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

Contractor certifies adherence with the regulations implementing Executive Order 12549, Debarment and suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

6. Recycling

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in Sections 12161 and 12220 of the PCC.

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ARTICLE 3 GENERAL PROVISIONS FOR DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California and apply to this Contract.

1. Corporate Qualifications to Do Business In California

- a. When contracts are to be performed in the State by corporations, the contracting agencies will be verifying that the contractor is currently in good standing with the Office of the Secretary of State and qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
- b. "Doing Business" is defined in Revenue and Taxation Code (R&TC) Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the State not be subject to the franchise tax.
- c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

2. Payee Data Record Form STD. 204

This form must be completed by all contractors that are not another State agency or other government entity.

3. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Contract. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

4. Americans with Disabilities Act

Contractor assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

5. Air or Water Pollution Violation

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Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of Federal law relating to air or water pollution.

6. Assignment of Antitrust Actions

The following provisions of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) shall be applicable to the Contractor.

"In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder."

"If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery."

"Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured hereby, or (b) the assignee declines to file a court action for the cause of action."

7. Child Support Compliance Act

The Contractor acknowledges in accordance with Public Contract Code section 7110 that:

- a) the Contractor recognizes the importance of child and family support obligations and shall comply with all applicable state and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) the Contractor to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire

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Registry maintained by the California Employment Development Department.

8. Cost or Pricing Data

At all times during and following the period of Contract performance, the State may require the Contractor to furnish such cost and pricing data as the State deems necessary to assess the reasonableness of Contract pricing, including the reasonableness of charges.

9. Conflict of Interest

a) Current State Employees (PCC Section 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

b) Former State Employees (PCC 10411):

- 1) For the two- (2) year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.
- 2) For the twelve- (12) month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve- (12) month period prior to his or her leaving State service.

10. Priority Hiring Considerations

The Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

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ARTICLE 4 GENERAL PROVISIONS FOR INFORMATION TECHNOLOGY CONTRACTS

1. Year 2000

The Contractor represents and warrants that the hardware, software, firmware and entire system delivered under this Contract shall accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date data with it. This Year 2000 warranty is in addition to all other warranty terms and conditions of this Contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this Contract with respect to defects other than Year 2000 performance.

2. Confidentiality of Data

Unless defined as a public record by law, all financial, statistical, personal, technical and other data and information to which the Contractor gains access in the performance of this Contract is confidential information. The Contractor, its officers, employees, contractors and agents shall maintain all confidential information in strict confidence and will not at any time use, publish, reproduce or disclose any confidential information except to authorized employees, contractors and agents requiring such information, as authorized in writing by the State, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. The Contractor shall take all steps necessary, including oral and written instructions to all employees, contractors or staff, to safeguard confidential information against unauthorized disclosure, reproduction, publication or use.

3. Rights in Data

- a. The State shall own all right, title and interest in and to all products of the services performed under this Contract, including, without limitation, software designed, derived, developed or installed with Federal financial participation under this Contract and/or software used to maintain, operate and improve the CWS/CMS, except (1) Third Party Software and associated documentation (referenced in Riders B and C) and (2) Contractor's administrative communications and records. Such products of the services performed under this Contract include, but are not limited to, software and source codes (e.g., application and non-application); software documentation; software modifications and associated documentation; system configurations and parameters; methodologies and algorithms developed for use under this Contract; the ideas, concepts, know-how or techniques relating to data processing developed during the course of this Contract by the Contractor or jointly by the Contractor and the State; all inventions, discoveries, or improvements to computer programs developed pursuant to this Contract; deliverables; designs; Specifications; work plans; records; papers; reports; charts; analog and digital

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media; computer printouts; and other materials. Contractor shall take all actions necessary to transfer ownership of these products to the State upon acceptance thereof. All such products shall be deemed works made for hire for the State for all purposes of copyright law, and copyright shall belong solely to the State. To the extent that any such product does not qualify as a work for hire under applicable law, and to the extent that the product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Contractor agrees to assign, and hereby assigns, all right, title and interest in and to the product, including, but not limited to, all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to the State. Contractor shall, at the expense of the State, assist State or its nominees to obtain copyrights, trademarks, or patents for all such products in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the State all the right, title and interest in and to such products. Contractor also agrees not to assert any moral right under applicable copyright law with regard to such products.

- b. This Contract shall not preclude the Contractor from developing materials outside this Contract which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
- c. The U.S. Department of Health and Human Services reserves a royalty-free, nonexclusive, and irrevocable license to produce, publish, or otherwise use and to authorize others to use for Federal Government purposes, any software designed, developed or installed with Federal financial participation, including modifications and documentation thereof.

4. Patent, Copyright, and Trade Secret Protection

- a. The Contractor, at its own expense, shall defend, indemnify and hold harmless the State, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including but not limited to attorneys' fees, and expenses from any claim or action against the State, its employees, officers, directors, contractors and agents which is based on a claim that the State's use of or rights to Equipment, software or any product supplied under this Contract infringes a patent, copyright or other proprietary right or misappropriates a trade secret. Such defense and payment shall be conditioned on the following:
 - 1) That the Contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - 2) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- b. If the Equipment, software or other product of the services of this Contract, or the

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operation thereof, becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement of a patent, copyright or other proprietary right or misappropriation of a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Equipment, software or product, or to replace or modify the same so that they do not violate any intellectual property rights and continue to meet all applicable Specifications. If neither of these options can reasonably be taken, or if the use of such Equipment, software or product by the State shall be prevented by injunction, the Contractor shall retrieve any or all Equipment, software or goods designated by State upon receipt of notice therefrom and refund the charges for such items, as applicable. If, in the sole opinion of the State, the return of such infringing Equipment, software or goods makes the continuation of this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge to the State. The Contractor agrees to take back any Equipment, software or goods designated by State upon receipt of notice therefrom and refund the charges for such items, as applicable.

- c. The Contractor shall have no liability to the State under any provision of this Paragraph with respect to any claim of infringement or misappropriation to the extent it is based upon:
 - 1) The combination or utilization of Equipment furnished hereunder with machines or devices not made or furnished by the Contractor unless done under the guidance or at the direction of Contractor.
 - 2) The use of Equipment furnished by the Contractor with operating software other than that supplied or authorized by the Contractor.
 - 3) The modification by the State of the Equipment or software furnished hereunder unless made under the guidance or at the direction of Contractor.
 - 4) The combination or utilization of software furnished hereunder with - software not supplied by the Contractor unless done under the guidance or at the direction of Contractor.
- d. Contractor certifies that it has appropriate systems and controls in place to ensure that State and Federal funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

5. Risk of Loss or Damage

The State shall be relieved from all risks of loss or damage to the Equipment or software provided under this Contract prior to acceptance thereof by the State, except when such loss or damage is due to fault or negligence of the State.

6. Limitations of Contractor's Liability

Contractor shall not be liable for damages arising out of or caused by an alteration to

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Equipment provided hereunder, if such alteration was not made by Contractor or done under the guidance or at the direction of Contractor. For purposes of this Contract an alteration to Equipment includes an attachment to Equipment.

7. Limitations of Both Parties' Liability

- a. Neither Contractor nor the State shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party, except that Contractor shall be liable for defaults of its subcontractors. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, or other disasters, whether or not similar to the foregoing.
- b. In no event shall the State be liable for any incidental, indirect, special or consequential damages, under contract, tort (including negligence), or other legal theory, regardless of the cause of action and even if State has been advised of the possibility of such damages. The State's liability to Contractor under this Contract shall not exceed the total value of the Contract, as amended, including, without limitation, change orders, work orders, and work authorizations, except acquisition of Additional Non-Exclusive goods and services.
- c. Except for damages arising under Article I, § 6 (Indemnification), Article I, § 8.e (Transition In), Article 4, § 1 (Year 2000), Article 4, § 2 (Confidentiality of Data), Article 4 § 4 (Patent, Copyright and Trade Secret Protection), and Rider F § 7 (Engineering Changes), in no event shall Contractor be liable for any incidental, indirect, special, or consequential damages, under contract, tort (including negligence), or other legal theory, regardless of the cause of action and even if Contractor has been advised of the possibility of such damages. Except for damages arising under Article I, § 6 (Indemnification), Article 4, § 1 (Year 2000), Article 4, § 2 (Confidentiality of Data), Article 4 § 4 (Patent, Copyright and Trade Secret Protection), and Rider F § 7 (Engineering Changes), Contractor's liability to State under this Contract shall not exceed the total value of the Contract, as amended, including, without limitation, change orders, work orders and work authorizations, except acquisition of Additional Non-Exclusive goods and services.

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RIDER A

Special Provisions and Contract-Specific Information

1. Distinction Between Guaranteed , Additional Exclusive, and Additional Non-Exclusive Goods and Services

The scope of this Contract includes guaranteed services, additional exclusive services, and additional non-exclusive goods and services. For the purposes of this Contract, these terms are defined in Appendix A, Glossary or Acronyms, Computing and Contract Terms (attached to this Rider), as follows:

- a. Guaranteed Service is defined as a service the Contractor must offer to the State that the State agrees to purchase from the Contractor;
- b. Additional Exclusive Service is defined as a service that the Contractor must offer to the State and that the State may purchase in an indefinite quantity at any time during the term of the contract. However, if the State chooses to purchase the service, the State agrees to do so exclusively from the Contractor; and
- c. Additional Non-Exclusive Good or Service is defined as a good or service that the Contractor must offer to the State and that the State may or may not lease or purchase in an indefinite quantity at any time during the term of the Contract. The State reserves the right, when the scope of work is defined, to competitively bid the good or service with no exclusive commitment to the Contractor.

2. Option to Lease or Purchase by Any Authorized Agency

- a. Any Authorized Agency shall have the right to lease or purchase designated Additional Exclusive or Additional Non-Exclusive goods and/or services for any Authorized Activity from the Contractor in accordance with the terms and conditions of this Contract; however, the contracting parties shall be the Authorized Agency and the Contractor, and any contractual obligations arising from such lease or purchase shall be those of the Authorized Agency and the Contractor. The State shall not be responsible for payment of leases or purchases made under this paragraph, and any use or ownership rights arising from these transactions shall be held by the Authorized Agency.
- b. The Contractor agrees to provide to any Authorized Agency such goods and services in accordance with the provisions of this Contract.
- c. The Contractor agrees to separately invoice each Authorized Agency for such goods or services leased or purchased in accordance with the provisions of this paragraph. A copy of such invoice shall be sent to each of the following State offices:

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- 1) the State's Project Executive (at the address listed in Paragraph 6 of this Rider below); and
- 2) Department of General Services
Procurement Division
1823 - 14th Street, Room 204
Sacramento, CA 95814
Attention: CWS/CMS Contract Administrator, Major Acquisitions

3. Liquidated Damages

It is agreed by the State and the Contractor that, in the event of a failure to meet the Service Level Objectives for (1) Statewide Availability, (2) Functional Restoration, and (3) Problem Resolution, damage will be sustained by the State and that it will be impractical and extremely difficult to ascertain and determine the actual damages which the State will sustain in the event of and by reason of such failure. It is therefore agreed that the Contractor will pay the State for such failures at the sole discretion of the State according to the following provisions.

a. Statewide Availability

The Contractor shall be liable for liquidated damages for failing to meet the Statewide Availability Service Level Objective (SLO), or that service level proposed by the Contractor, whichever is higher, for Severity Level 1 outages that have a statewide impact. (See RFP, Section IV, Table 4-4). For each minute that the Unscheduled Downtime Average exceeds that time allocated for such by the SLO, Contractor shall be charged an amount that is a function of the following: (1) the Contract Value per Minute (CVM), (2) Excess Downtime Minutes (EDM) - the number of minutes that the Unscheduled Downtime Average (UDA) exceeds that time allocated for downtime by the SLO, also known as Allocated Unscheduled Downtime (AUD); and (3) A scale factor equal to the ratio of the Unscheduled Downtime Average (UDA) to Allocated Unscheduled Downtime (AUD) The formula is as follows:

$$\text{CVM} \times \text{EDM} \times \text{UDA/AUD}$$

For example, with an SLO of 99.8%, the Allocated Unscheduled Downtime is 86 minutes per month. If the Contractor accrues an Unscheduled Downtime Average of 101 minutes per month, there will be fifteen Excess Downtime Minutes subject to liquidated damages. Where CVM is \$100, the calculation will be as follows:

$$\$100 \times 15 \times 101/86 = \$1,761.83 \text{ in liquidated damages.}$$

The measurement of Contractor conformance with the SLO for Statewide Availability will occur at the end of each calendar month and will be based on a rolling three-month average. Each statewide outage will count, as a minimum, as a 20-minute outage. (See the footnote to RFP, Section IV, Table 4-3.) Liquidated damages for Availability will accrue concurrently with liquidated damages for Functional Restoration and Problem Resolution when the outages are such that all provisions for liquidated damages apply.

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b. Functional Restoration

The Contractor shall be liable for liquidated damages for failing to meet the Functional Restoration Service Level Objective (SLO), or that service level proposed by the Contractor, whichever is higher, for Severity Level 1 outages that have statewide impact. (See RFP, Section IV, Table 4-2). For each minute that a statewide outage continues past the duration allocated by the SLO for Functional Restoration, Contractor shall be charged an amount that is a function of (1) Contract Value per Minute (CVM), (2) Excess Restoration Minutes (ERM) - the number of minutes for Functional Restoration that exceed the amount allocated for such by the SLO, a factor known as Allocated Restoration Duration (ARD), and (3) a scale factor equal to the ratio of the actual Outage Duration (OD) to Allocated Restoration Duration (ARD). The formula is as follows:

$$\text{CVM} \times \text{ERM} \times \text{OD/ARD}$$

For example, if the SLO establishes an Allocated Restoration Duration of 8 hours and the Contractor does not achieve Functional Restoration until 9 hours, there will be sixty Excess Restoration Minutes subject to liquidated damages. Where the CVM is \$100, the calculation will be as follows:

$$\$100 \times 60 \times 9/8 = \$6,750.00 \text{ in liquidated damages.}$$

The measurement of Contractor conformance with the SLO for Functional Restoration will occur at the end of a statewide outage. Liquidated damages for Functional Restoration will accrue concurrently with liquidated damages for Availability and Problem Resolution when the outages are such that all provisions for liquidated damages apply.

c. Problem Resolution

The Contractor shall be liable for liquidated damages for failing to meet the Problem Resolution Service Level Objective (SLO), or that service level proposed by the Contractor, whichever is higher, for Severity Level 1 outages that have statewide impact. (See RFP, Section IV, Table 4-2). For each minute that a statewide outage continues past the duration allocated by the SLO for Problem Resolution, Contractor shall be charged an amount that is a function of (1) Contract Value per Minute (CVM), (2) Excess Problem Resolution Minutes (EPRM) - the number of minutes for Problem Resolution that exceed the amount allocated for such by the SLO, a factor known as Allocated Problem Resolution Duration (APRD), and (3) a scale factor equal to the ratio of the actual Outage Duration (OD) to Allocated Problem Resolution Duration (APRD). The formula is as follows:

$$\text{CVM} \times \text{EPRM} \times \text{OD/APRD}$$

For example, if the SLO establishes an Allocated Problem Resolution Duration of 24 hours and the Contractor does not achieve resolution until 25 hours, there will be sixty Excess Problem Resolution Minutes subject to liquidated damages. Where the CVM is \$100, the

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calculation will be as follows:

$$\$100 \times 60 \times 25/24 = \$6,250.00 \text{ in liquidated damages.}$$

The measurement of Contractor conformance with the SLO for Problem Resolution will occur at the end of a statewide outage. Liquidated damages for Problem Resolution will accrue concurrently with liquidated damages for Availability and Functional Restoration when the outages are such that all provisions for liquidated damages apply.

4. Price Decline

a. Applicable to Third Party Contractors

Prices quoted shall be the maximum for the Contract period subject to any price escalation provisions. However, should a price decline be announced by the manufacturer after Contract award, but prior to a third party contractor taking title to any goods; and should the third party contractor be the recipient of this manufacturer's price decline; it shall be passed on in total to the State by the third party contractor. Any interest, finance, or other charges based on the original Contract price will be recomputed using the rates after price decline and the differences will also be passed to the State in total.

b. Applicable to Manufacturers

Prices quoted shall be maximum for the Contract period subject to any price escalation provisions. However, should a price decline be announced by the manufacturer after Contract award, but prior to the State taking title to the goods, it shall be passed on in total to the State by the manufacturer. Any interest, finance, or other charges based on the original Contract price will be recomputed using the rates after price decline and the differences will also be passed to the State in total.

5. Forced, Convict, and Indentured Labor

In accordance with PCC Section 6108, no foreign-made Equipment, materials, or supplies furnished pursuant to this Contract may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a proposal to the State or accepting an order, the Contractor agrees to comply with the requirements of this provision of this Contract.

6. Invoices

a. Invoices payable by the State shall be submitted in triplicate to:

CWS/CMS Project Executive
Health and Welfare Data Center
1651 Alhambra Blvd.
Sacramento, CA 95816
Attention: Accounting Office

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- b. All invoices, bills of lading, shipping memos, packages and any other form of correspondence must refer to this Contract number plus any unique identifier generated by the State on a statement of work or order.
- c. Invoices for services shall account for each service by description and cost. Supplemental invoice descriptions may be mutually agreed upon by the State and the Contractor.
- d. Invoices for Equipment shall account for each item by model number, serial number, and physical location with applicable costs broken down by Equipment cost, sales tax, installation charge, and delivery charge.
- e. Invoices for software shall account for each item by product name, product identification number, physical location, serial number of the Equipment on which it is to be installed, and applicable costs.
- f. The Contractor shall make every effort to reconcile incorrect invoices within a timely manner. This effort shall not exceed thirty (30) days from notification by the State of the discrepancy. The State shall withhold payments from invoices issued as a result of this Contract until the discrepancies have been corrected.
- g. Correct and undisputed invoices for services are due and payable and constitute an obligation to the State in the month following the month in which the State accepted those services. Payment of invoices for services shall be in accordance with the conditions specified in Paragraph 7 of this Rider.
- h. Correct and undisputed invoices for Equipment and/or software are due and payable in accordance with the conditions specified in Paragraph 7 of this Rider.
- i. Invoices shall not be submitted more frequently than monthly to the State.

7. Required Payment Date

Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of: (a) the date of acceptance of goods or performance of services; or (b) receipt of an accurate invoice.

8. Withholding from Payment

- a. The State shall have the right to withhold payments due to Contractor under this Contract or any other Contract with the State in whole or in part, to the extent Contractor fails to perform its obligations as set forth in this Contract; provided, however, that the amount withheld under such circumstances will be limited to the amount in dispute.
- b. The State will also have the right to withhold any and all payment in accordance with Article 1, Paragraph 8, Rights and Remedies of the State for Default, and Rider I,

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Paragraph 8, Performance Bond.

9. Project Reporting

The Contractor shall provide regular written and oral project status reports, as required per the attachments to this Rider, including a review of current and subsequent weeks' work plans plus an analysis of any problems previously encountered and still unresolved or anticipated to be encountered. These reports will be made to the State's Project Executive or designee and other designated State personnel.

10. General Warranty

- a. Contractor shall perform all services required pursuant to this Contract in a professional manner, with high quality. Contractor also warrants that goods and services furnished hereunder will conform to the requirements of this Contract (including all descriptions, Specifications and drawings made a part hereof), and that such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects of design. The State's approval of designs or Specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b. All warranties, including, but not limited to, special warranties specified in the attachments to this Rider or Riders B, C or I, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.

11. Limitation of Actions

No action, regardless of form, arising out of this Contract may be brought by either party more than four (4) years after the cause of action has arisen, or in the case of nonpayment, more than two (2) years from the date of the last payment.

12. Conflicts between Documents (Order of Precedence)

In the event that there is a conflict between the documents comprising the Contract, the following order of precedence shall apply.

- a. Any amendment to the Contract;
- b. One of the following:
 - 1) The provisions of a Work Order prepared according to the Contract; or
 - 2) The provisions of an order for Equipment and/or software prepared according to the Contract; or
 - 3) The provisions of a Work Authorization prepared according to the Contract; or

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- 4) The provisions of a Change Order prepared according to the Contract,
- c. The provisions of all Riders and attachments to the Contract;
- d. The Article 1, General Terms and Conditions of the Contract, Article 2, Contractor Certifications, Article 3, General Provisions for Doing Business in the State of California, and Article 4, General Provisions for Information Technology Contracts and the Contractor's response thereto;
- e. The provisions of RFP HWDC-7012, and
- f. The Contractor's response to RFP HWDC-7012.

13. News Releases.

News releases pertaining to this Contract shall not be made without prior written approval of the State's Project Executive.

14. Information Incorporated in this Rider

The following information shall be attached to and incorporated into this Rider subsequent to receipt of the Final Proposals and prior to the time the Contract is finalized:

- Key Action Dates (RFP Exhibit I-A)
- Current System (RFP Section III)
- Technical Requirements (RFP Section IV) and the Contractor's response thereto
- Administrative Requirements (RFP Section V) and the Contractor's response thereto
- Glossary of Acronyms, Computing and Contract Terms (RFP Appendix A)
- County Network Equipment (RFP Appendix B)
- CWS/CMS Library Documentation (RFP Appendix C)
- Critical Business Hours By County & By Site (RFP Appendix D)

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RIDER B

List of Equipment (and Operating Software) Pricing and Allied Information (Additional Non-Exclusive)

1. Use of Equipment and Basis for Payment.

a. General

Equipment under this Contract, including all necessary operating software, may be leased, purchased during an existing lease period, or purchased outside of a lease plan. Equipment under this Contract may be operated at any time and for any length of time at the convenience of the State except for any time required for preventive and remedial maintenance.

b. Lease Rates and Purchase Prices

- 1) The monthly cost to lease Equipment under this Contract shall be in accordance with the catalogue pricing referenced in this Rider. The lease plan(s) applicable to such Equipment is contained in Rider E.
- 2) Catalogue pricing to purchase Equipment under this Contract shall be referenced in this Rider.
- 3) All operating software to be delivered with Equipment, as appropriate, is referenced in this Rider, with any charges for its use, including, but not limited to, licensing fees for perpetual use in accordance with Rider G.

c. Partial Monthly Lease

The basic monthly rental for leased Equipment, initially installed for a fraction of a calendar month, shall be computed at the rate of 1/30th of the basic monthly rental for each day the Equipment is installed beginning on and including the first day of the successful thirty (30) day acceptance period or such lessor period as may be agreed to by the State, through the last calendar day of the month. Equipment discontinued at any other time than the last day of the calendar month shall be billed for its basic monthly rental less 1/30th of the basic monthly rental for each calendar day in that month following the date of discontinuance.

2. Orders

State Equipment order(s) shall be submitted on a Std. Form 65, Contract/Delegation Purchase Order (hereinafter referred to as an "order") and be incorporated as a Schedule to this

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Contract. Each Equipment order may be amended, as appropriate, by written agreement.

3. Site Preparation

- a. If the Equipment to be installed requires special power or environmental considerations, Contractor shall provide site preparation Specifications for Equipment listed on the order within a reasonable time upon request by the State, unless such Specifications have been included in the Contractor's proposal. These Specifications shall be in such detail as to ensure that Equipment, if installed according to these Specifications, shall operate in accordance with their Specifications, efficiently and properly from a functional point of view.
- b. The State shall prepare a site plan showing the location of each item of Equipment listed in the order and detailing the associated electrical power and environmental control facilities. The Contractor will review and comment on the adequacy of the State's plan, and shall be permitted free access subject to the security requirements for the site for this purpose.
- c. The State shall cause the site to be prepared in accordance with the Contractor's written minimum site and environmental Specifications on or before the Facility Readiness Date specified on the Equipment order.
- d. Any subsequent alterations or modifications to the site which are directly attributable to incomplete or erroneous Specifications provided by the Contractor and which involve extra expense shall be made at the expense of the Contractor, to the extent that such costs would not have been incurred had the complete and/or correct Specifications been initially provided.
- e. The State is responsible for arranging for procurement, installation, and maintenance of communication media (telephone lines, modems, etc.) not provided by the Contractor which are necessary for the operation of CWS/CMS.

4. Packing and Shipment

- a. All Equipment is to be packed in suitable containers for protection in shipment and storage, and in accordance with the applicable Specifications. Each container of a multiple container shipment shall be identified to show:
 - 1) the number of the container and the total number of containers in the shipment; and
 - 2) the number of the container in which the packing sheet has been enclosed.
- b. All shipments by Contractor or its subcontractors must include packing sheets identifying: this Contract number plus any unique order identifier; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different orders shall be listed on separate packing sheets.

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- c. Shipments to and from the installation site shall be the responsibility of the Contractor and shall be made F.O.B. destination only by commercial carrier and by padded van or air freight per the charges referenced in this Rider. These charges do not include rigging. If air shipment by commercial carrier is not specified by the State, shipment shall be made by padded van, or Contractor may, at its option, use a premium method of transportation (e.g., air freight), but the State shall pay only Equipment destination charges referenced in this Rider.
 - d. Notwithstanding the Subparagraph c above, the State reserves the option, with concurrence from the Contractor (such concurrence not to be unreasonably withheld), to arrange for, and to pay all transportation, rigging, and drayage costs, for leased Equipment at the time of the discontinuance of rental or lease. The State agrees that such transportation shall be by commercial carrier using padded van properly constructed and equipped for shipment of electronic Equipment.
 - e. When the State elects to specify air shipment by commercial carrier, written authorization for such method shall be furnished to the Contractor at least thirty (30) days prior to the scheduled shipping date and the State shall pay the air freight charges in lieu of the Equipment destination (in) charges referenced in this Rider. The Contractor shall furnish copies of the freight bills to substantiate transportation charges billed by the Contractor to the State.
 - f. Transportation charges for the shipment of empty packing cases shall be paid by the Contractor.
 - g. The Contractor shall bear the cost of transportation, rigging, and/or drayage whenever Equipment is shipped or moved for mechanical replacement purposes unless the replacement was due to fault or negligence by the State.
 - h. The State shall pay only those rigging costs incurred at the location controlled by the State unless otherwise agreed to between the State and the Contractor.
5. Delivery
- a. Delivery shall be to the name(s) and address(es) listed on the State's order form.
 - b. Contractor shall strictly adhere to the delivery and completion schedules specified in the order form. Delivery may be restricted to non-peak commute hours at specific locations.
6. Installation and Delivery Dates of Equipment
- a. Except as otherwise provided in Subparagraph h below, the Contractor shall install Equipment referenced in this Rider ready for use on or before the Installation Dates specified in the order.
 - b. As appropriate for operating software referenced in this Rider, the Contractor shall

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provide those programming aids, program products, and applications listed on the order, per the Delivery Dates specified on the order, and shall certify to the State that such operating software has been delivered and is ready for State use.

- c. Notwithstanding the Unilateral Changes provision, Installation Dates may be changed by the State at no additional cost if, at least thirty (30) days prior to the Installation Date(s), the State defers the installation of any Equipment and a new Installation Date(s) is established. Such unilateral deferment shall not exceed ninety (90) days or the Unilateral Changes provision shall apply.
- d. The State agrees to have the site prepared on or before the Facility Readiness Date specified on the Equipment order in accordance with the Contractor's written site preparation Specifications.
- e. Subject to the security regulations of the State, the State shall provide the Contractor access to the site for the purpose of installing Equipment prior to the Installation Date. The Contractor shall specify in writing the time required to install the Equipment.
- f. Except as otherwise provided in Subparagraph h below, the Contractor shall determine that the Equipment is ready for use and operates in conformance with the Contractor's published Specifications. The Contractor shall then certify in writing to the State that the Equipment is installed and ready to be turned over to the operational control of the State. The Contractor shall also provide to the State appropriate documentation to support the above certification, at which time the State will accept control of the Equipment for the purpose of validating its installation and performance.
- g. Notwithstanding certification by the Contractor that the Equipment has been installed and is ready for use, the Equipment shall not be deemed installed within the terms of this Contract until such installation is confirmed by the State through testing prescribed in Paragraph 7 below. If the test is successfully completed, the Equipment shall be deemed installed and ready for use as of the date of the Contractor's certification. The State shall notify the Contractor in writing within five (5) working days that the State concurs that the Equipment was installed. If the Equipment fails to successfully complete the test, the Contractor shall be notified immediately of the failure, with written confirmation to be provided in not more than five (5) working days. Control of the Equipment shall immediately be given to the Contractor. The Equipment shall not be deemed to be installed until the Contractor re-certifies such installation and the above-described test is successfully completed.
- h. If the nature of the Equipment is such that the services of the Contractor are not required for its installation, and the Contractor so states in writing and the State agrees in writing that such Contractor services are not necessary, the Contractor may ship the Equipment to the State site. If the Equipment arrives not later than five (5) working days prior to the Installation Date, the Equipment shall be deemed to have been installed on or before the Installation Date. If this procedure is used, the State shall make reasonable effort to install the Equipment prior to the Installation Date, and shall confirm such installation in accordance with the procedures set forth in Subparagraph f above, without requiring a

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certification of installation as set forth in Subparagraph e above by the Contractor. If, however, the State is unable to install the Equipment, it shall notify the Contractor that Contractor assistance is required. The Contractor shall then assist in the Equipment installation and certify that such installation has been accomplished.

- i. The Contractor is responsible for installation of all Contractor-supplied items at the rates referenced in this Rider.

7. Acceptance of Equipment

- a. Acceptance is required for all Contractor-supplied Equipment listed in this Rider, including all Equipment initially installed, improved versions of this Equipment, any such Equipment which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute Equipment provided by the Contractor in lieu thereof, unless Rider D provides otherwise. The purpose of the acceptance process is to ensure that the Equipment operates in accordance with the Equipment manufacturer's Specifications.
- b. When Equipment has been provided and certified in accordance with Paragraph 6e, the State shall engage in the acceptance process, defined in Paragraph 7.f below, by the first State workday following such certification.
- c. If the acceptance process is not successfully completed, the State shall have the option to request substitute Equipment, terminate that portion of the Contract that relates to the unaccepted Equipment, terminate the entire Contract for Contractor's default, or continue the acceptance process. The partial or entire contract termination provided for in this provision shall be in accordance with Paragraph 8, Rights and Remedies of State for Default, of Article 1, General Terms and Conditions. This provision shall apply to each phase of the acceptance process
- d. Equipment shall not be accepted by the State and no charges associated with such Equipment shall be paid by the State until the Equipment has satisfactorily completed the acceptance process.
- e. Immediately upon successful completion of the acceptance process, the State shall notify the Contractor in writing of the acceptance of the Equipment and authorize appropriate payment. The State shall maintain adequate records to document the acceptance process.
- f. Acceptance Process
 - 1) Inspection - The State shall inspect the Equipment provided to ascertain that the Equipment provided is the same as the Equipment ordered. If the Contractor provides substitute Equipment, the State shall ascertain whether the substitute Equipment is a comparable Equipment product.
 - 2) Operation - The State shall operate the Equipment provided to ascertain that it performs in accordance with the manufacturer's Specifications. If the Contractor

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provides substitute Equipment, the State shall operate the substitute Equipment to ascertain whether the Equipment performs in accordance with the manufacturer's Specifications of the Equipment originally ordered.

8. Training and Technical Services

a. Training

The Contractor agrees to provide Equipment and operating software training as required in the attachment to Rider A. Any extra training to be provided will be as stated in Rider H.

b. Additional Exclusive and Additional Non-Exclusive Technical and Other Personal Services

Additional Exclusive and Additional Non-Exclusive technical and other personal services to be provided by the Contractor to the State, if any, will be as stated in Rider I.

9. Documentation

- a. The Contractor shall provide one (1) copy of all manuals and other printed materials for each unit of Equipment leased or purchased, including updated versions thereof during the warranty period, which are useful and necessary to the State in its use of the Equipment. Such copy(ies) will be provided at no extra charge to the State. If the Equipment and/or operating software is maintained by the Contractor, all documentation and updates thereto shall be provided at no extra charge to the State.
- b. The Contractor agrees to provide to the State, extra copies of all such manuals and other printed materials, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or operating software provided hereunder. The Contractor agrees to provide extra documentation at prices not in excess of charges made by the Contractor to its best customers for similar documentation.
- c. If the State desires to perform its own maintenance on Equipment purchased under this Contract, then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant documentation to allow the State to maintain the Equipment to the Contractor's Specifications. The Contractor agrees that the State may reproduce such documentation for its own use in maintaining the Equipment. If the State desires to perform its own maintenance on Equipment purchased under this Contract, the Contractor agrees to license the State to use the above noted documentation, or any other Contractor that the State may have hired to maintain the Equipment. The State agrees to include the Contractor's copyright notice on any such documentation reproduced, in accordance with copyright instructions to be provided by the Contractor. In addition, if the State chooses to modify the documentation for its own purposes, the Contractor grants the State the right to make such modification(s).

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10. Equipment Warranty

For one (1) year, retroactive to the first day following the successful completion of the acceptance period, the Contractor warrants that the Equipment will operate in accordance with all applicable Specifications, including, but not limited to, manufacturers' Specifications. If it does not, Contractor will repair or replace Equipment such that it will operate in accordance with all applicable Specifications. Contractor also warrants to the State that the Equipment is free from defects in material and workmanship. If it is not, Contractor will furnish, on an exchange basis, replacements for Equipment or parts which have been properly reported by the State as having been, in the State's opinion, defective and are so found by the Contractor upon inspection. Also see General Warranty, Rider A, Paragraph 10.

11. Maintenance Under Warranty

Contractor will furnish all maintenance services and parts for all Equipment, software, and firmware referenced in this Rider for the one (1)-year warranty period, provided that such maintenance service or parts are not required because of accident, neglect, misuse, failure of electrical power or air conditioning, humidity control, or causes outside Contractor's reasonable control. All such services and parts shall be furnished at no charge to the State at the basic Level 3 maintenance coverage defined in Rider F. The Contractor shall also provide to the State an option to upgrade maintenance coverage for specific Equipment to Level 2 or Level 1. Monthly rates for this incremental maintenance coverage upgrade are included in this Rider.

12. Maintenance Coverage

- a. After warranty, the Contractor is responsible for the maintenance of Equipment that is leased or purchased under this Contract plus the preexisting CWS/CMS Equipment identified in Appendix B of the RFP. The Contractor shall maintain the Equipment so that it operates in accordance with all applicable Specifications, including, but not limited to, manufacturer's Specifications. Contractor shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with the provisions of Rider F with the monthly charges, if any, for Level 3, Level 2 or Level 1 maintenance coverage listed in Rider I. The Contractor agrees to make maintenance service comparable to service provided during the warranty period, available for the term of the Contract and all Contract extensions, if any, or for a minimum of five (5) years, whichever is longer.
- b. Service will be furnished, in accordance with Rider F, by the Contractor's nearest service location. Subject to the security regulations of the State, the Contractor shall have prompt access to the Equipment to perform this service. There shall be no charge for travel expense associated with services for which the Contractor is responsible under this provision.
- c. Any such service required as a result of erroneous site preparation Specifications furnished by the Contractor (see Rider B, Paragraph 3) or otherwise required due to the fault or negligence of the Contractor, shall also be provided by the Contractor at no extra

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charge. All replaced parts shall become the property of the Contractor. Prior to the expiration of the one- (1) year warranty period, whenever Equipment is shipped for mechanical replacement purposes, the Contractor shall bear all costs of such shipment including, but not limited to, costs of packing, transportation, rigging, drayage, and insurance. The warranty shall apply to the replacement Equipment beginning on the first day of the successful performance period for the replacement Equipment.

- d. When a non-Contractor control program is used and, as a result, the Contractor's maintenance diagnostic routines do not pinpoint the failure, the State shall pay for the time spent by the Contractor in diagnosing the failure at the applicable per call per technician hourly rate listed in Rider I.
- e. When the Contractor is called upon to perform remedial maintenance service on the Equipment and by mutual agreement it is determined that either no failure existed or that the service was outside of the warranty as set forth herein, the State shall pay for the travel expense and the time spent by the Contractor at the applicable per call per technician hourly rate listed in Rider I.
- f. Unless otherwise mutually agreed, the Contractor shall not be required to adjust or repair any Equipment or part if it would be impossible for Contractor personnel to do so because of alterations made in the Equipment by or on behalf of the State or because its connection by mechanical or electronic means to other Equipment or devices not furnished by the Contractor. Increased service caused by any alteration or attachment shall be paid for by the State at the applicable per call per technician hourly rate listed in Rider I, unless the Contractor elects not to apply such charge on an individual instance basis.

13. Supplies

Lease charges do not include supplies necessary for the operation of the Equipment. Supplies purchased under this Contract by the State shall conform to the Contractor's and/or manufacturer's published Specifications. If the Contractor does not publish Specifications for supplies, the State shall be free to utilize any supplies that are advertised as appropriate for any leased piece of Equipment.

The Contractor shall identify all supply items in an attachment to this Rider and provide unit prices.

14. Major Field Modifications

If the Contractor is responsible for the maintenance of Equipment under this Contract, the Contractor shall provide for on-site field modification of the Equipment under the provisions of Rider F.

15. Alterations and Attachments

- a. With the written consent of the Contractor (such consent not to be unreasonably

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withheld), the State may make alterations or install attachments to the Equipment (including, but not limited to, other software applications that may be run on the Equipment) at the State's expense if, in the Contractor's opinion, no safety hazard is thereby created. The State shall assume full liability for any damages and/or degradation of Equipment performance attributable to such alteration or attachment.

- b. If the alteration or attachment interferes with the normal and satisfactory maintenance of any of the Equipment in such a manner as to render maintenance impractical, the State will, upon receipt of written notice from the Contractor to that effect, remove the alteration or attachment and restore the Equipment to its normal condition.
- c. If an inspection by the Contractor is required to determine if the unaltered portion of the Equipment remains practical to maintain or that no safety hazard has been created, the State shall be so notified and a mutually agreeable inspection date will be scheduled. Charges for such inspection shall be paid by the State at the Contractor's applicable time and material labor rates listed in Rider I.
- d. Repair of damage or increase in Contractor's service personnel time, attributable to the alteration or attachment, will be billed to the State at the Contractor's applicable time and material labor rates listed in Rider I.
- e. Such alterations or attachments shall be removed and the Equipment restored to the prior configuration at State expense before discontinuance of the Equipment.
- f. Any reprogramming agreed to by the Contractor which is required to accommodate such alterations or attachments shall be accomplished at the Contractor's applicable time and material labor rates listed in Rider I.

16. Relocation of Leased Equipment

- a. Except in an emergency, Equipment leased under this Contract shall not be moved from the location in which installed, unless the Contractor has been notified that the move is to be made. The State shall notify the Contractor within twenty (20) days of Equipment moves made by State personnel.
- b. Upon seven (7) working days prior written notice to the Contractor specifying the new location, Equipment may be transferred from one location to another in a suitably constructed van or similar vehicle. If the State elects to have the Contractor move the Equipment, the State will give the Contractor at least seven (7) working days written notice of the intended move date. The Contractor shall then, on the appointed date, move the Equipment, reconnect it, and return it to operational status.
- c. The State will reimburse the Contractor for all reasonable transportation, transit risk insurance, rigging, packing, unpacking, and drayage charges for such relocation at the sum of the rates for Installation and Deinstallation referenced in this Rider. However, Contractor shall maintain responsibility for the Equipment at all times during the move.

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- d. On the appointed move date, the Contractor shall disconnect affected Equipment, physically move (relocate) it, reconnect it, and certify the successful relocation.
- e. By mutual consent of the Contractor and the State, the State may move certain peripheral devices. In the event of such a move, the Contractor shall be relieved of responsibility for the Equipment during the move.
- f. If the State elects to move the Equipment and it is mutually determined that the Equipment became damaged by reason of either a disconnect of Equipment to be moved, a move of the Equipment, or a reconnect of the Equipment moved that was not authorized by the Contractor in advance, the State shall pay the Contractor's applicable time and material labor rates listed in Rider I for the repair of said Equipment.
- g. Rearrangement of Equipment on the same site for State convenience shall be at the Contractor's applicable time and material labor rates listed in Rider I.
- h. At the State's option, the Contractor may be required to assist in relocating purchased Equipment.

17. Return of Leased Equipment

- a. Within five (5) working days after the date of discontinuance of lease or rental, the Contractor shall contact the State's Project Executive to schedule a date and time to remove the specified Equipment. The Contractor will remove only those pieces of Equipment identified by a serial number unless changes are authorized in writing by the State's Project Executive. The Contractor must agree to a removal date no later than thirty (30) days from the date the Contractor and the State's Project Executive meet to schedule the date and time to remove the specified Equipment.
- b. The State's Project Executive will notify the Contractor in writing that the Equipment is ready for de-installation giving specific date(s) and time(s) as agreed to in Subparagraph a above. The Contractor will be responsible for disconnecting the Equipment and getting it ready for removal from the site. The Contractor will then have to pick up the Equipment on the specific date(s) agreed to above.
- c. If the Equipment is not removed by the Contractor on the specific date(s) agreed to above, the Contractor will incur a ten dollar (\$10.00) storage charge per day per machine, or component thereof. This storage charge will be deducted from any amounts that the State owes the Contractor.

18. Title to Equipment

- a. Title to Equipment, accessories and devices leased under this Contract shall not vest in the State unless such items are later purchased by the State. All devices and accessories furnished by the Contractor hereunder, except those purchased by the State, shall accompany the leased Equipment when returned to the Contractor.

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- b. Title of the Equipment shall remain with the Contractor and assigns, if any, until such time as the full purchase price, applicable taxes and interest charges, if any, are paid to the Contractor, less withholds and retentions as permitted in the Contract. Title to each machine will be transferred to the State when the purchase price, taxes and associated interest charges, if any, are paid, less withholds and retentions as permitted in the Contract. Title to a special feature installed on a machine and for which only a single installation charge was paid shall pass to the State at no extra charge together with title to the machine on which it is installed.

19. Newly Manufactured Goods

Unless otherwise specified or with the advance written consent of the State, all goods furnished under this Contract shall be newly manufactured goods. Used or reconditioned goods are prohibited.

20. Connection Points for Central Processor Evaluation Equipment

If requested by the State, the Contractor agrees to identify, on all items of Equipment supplied under this Contract, all appropriate test points for connecting one of the commercially available hardware monitors designed to measure Equipment performance.

21. Equipment Substitution

If an Equipment component, including operating software, is withdrawn from the market and/or a new Equipment component is announced by the manufacturer during the Contract period, a substitute/replacement component may be proposed provided that:

- a. The Equipment component meets or exceeds the Technical Requirements and the Contractor's response thereto included in Rider A, and
- b. The price of the Equipment component is no greater than the price of the machine component to be replaced, unless the State agrees in writing that a higher price is commensurate with an increased utility to the State, and
- c. The Equipment component meets or exceeds the Customer In Use Requirements as stated in the Administrative Requirements included in Rider A, and
- d. The Contractor provides to the State, at no extra cost, one (1) or more sample(s) of the Equipment component for evaluation purposes.

Substitution will take place only with the mutual consent of both parties. Such consent will not be unreasonably withheld by the State or the Contractor.

22. Purchase Option

- a. During the period of time the State leases Equipment from the Contractor, the Contractor may credit the State with a portion of the lease payments as purchase option credits to be

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applied against the purchase price if the State decides to purchase the Equipment. The accumulation of such credits, if applicable, shall be in accordance with the computations specified in Rider E. The Contractor agrees that the State may, at any time following acceptance of the Equipment and during the life of this Contract, purchase any or all Equipment in accordance with this Contract.

- b. The State reserves the right to purchase any Equipment outside of a lease plan.

23. Software/Firmware Product Updates

- a. The Contractor agrees to provide to the State supplemental, corrective, or restorative software/firmware updates such as "Service Releases" or "Patches" within thirty (30) calendar days of announcement by the software/firmware manufacturer at no extra cost to the State. The Contractor agrees to apply these updates during scheduled downtime allocated for this purpose.
- b. Not later than delivery of such software/firmware updates, the Contractor agrees to provide to the State updated copies of all manuals and other printed materials to reflect the software/firmware updates.

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Cost Table VI-6.A
Equipment (and Operating Software) and Training
Purchase Minimum Discount

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Cost Table VI-6.B
Equipment (and Operating Software)
Lease Minimum Discount

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RIDER C

List of Software (Other than Operating Software) Pricing and Allied Information (Additional Non-Exclusive)

1. Use of Software and Basis for Payment

a. General

Software included in this Rider may be used at any time and for any length of time at the convenience of the State except for any time required for preventive and remedial maintenance. Operating software to be delivered with Equipment is not included in this Rider (refer to Rider B).

b. Licensing Prices

The cost to the State to license software is referenced in this Rider with any charges for its use, including, but not limited to, licensing fees for perpetual use in accordance with Rider G.

2. Orders

State software order(s) shall be submitted on a Std. Form 65, Contract/Delegation Purchase Order (hereinafter referred to as an "order") and be incorporated as a Schedule to this Contract. Each software order may be amended, as appropriate, by written agreement.

3. Packing and Shipment

a. All software is to be packed in suitable containers for shipment in accordance with the applicable Specifications. Each container of a multiple container shipment shall be identified to show:

- 1) the number of the container and the total number of containers in the shipment; and
- 2) the number of the container in which the packing sheet has been enclosed.

b. All shipments by Contractor or its subcontractors must include packing sheets identifying: this Contract number plus any unique order identifier; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different orders shall be listed on separate packing sheets.

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- c. Shipments to and from the installation site shall be the responsibility of the Contractor.
- 4. Delivery
 - a. Delivery shall be to the name(s) and address(es) listed on the State's order form.
 - b. Contractor shall strictly adhere to the delivery and completion schedules specified in the order. Delivery may be restricted to non-peak commute hours at specific locations.
- 5. Installation and Delivery Dates of Software (other than Operating Software)
 - a. The Contractor shall provide those programming aids, program products, and applications listed on the order, per the Delivery Dates specified on the order, and shall certify to the State that such software has been delivered and is ready for State use. For purposes of this Paragraph, "delivered" also means received by the State, if such software is mailed by the Contractor.
 - b. If, by mutual agreement of the parties, the services of the Contractor are required to install the software on the applicable Equipment, "delivery" of the software, for the purposes of this Contract, shall be deemed to include such installation services.
 - c. Subject to the security regulations of the State, the State shall provide the Contractor access to the site for the purpose of installing software. The Contractor shall specify in writing the time required to install the software.
 - d. The software shall not be deemed installed within the terms of this Contract until such installation is confirmed by the State through testing prescribed in Paragraph 6 below.
 - e. During the period of this Contract, when requested by the State, the Contractor shall offer and provide at the State's request any other software which it has developed or may develop at a future date for general use with the type of Equipment referenced on Rider B and which it provides to its best customers, at the charges generally in effect at that time. Any such software shall be acceptance tested in accordance with Paragraph 6 of this Rider.
- 6. Acceptance of Software (other than Operating Software)
 - a. Acceptance is required for all Contractor-supplied software listed in this Rider, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute software provided by the Contractor in lieu thereof, unless Rider D provides otherwise. The purpose of the acceptance process is to ensure that the software operates in accordance with the software manufacturer's Specifications.
 - b. When software has been provided and certified in accordance with Paragraph 5a, the State shall engage in the acceptance process, defined in Paragraph 6.f below, by the first

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State workday following such certification.

- c. If the acceptance process is not successfully completed, the State shall have the option to request substitute software, terminate that portion of the Contract that relates to the unaccepted software, terminate the entire Contract for Contractor's default, or continue the acceptance process. The partial or entire contract termination provided for in this provision shall be in accordance with Paragraph 8, Rights and Remedies of State for Default, of Article 1, General Terms and Conditions. This provision shall apply to each phase of the acceptance process.
- d. Software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the acceptance process.
- e. Immediately upon successful completion of the acceptance process, the State shall notify the Contractor in writing of the acceptance of the software and authorize appropriate payment. The State shall maintain adequate records to document the acceptance process.
- f. Acceptance Process
 - 1) Inspection - The State shall inspect the software provided to ascertain that the software provided is the same as the software product and version ordered. If the Contractor provides substitute software, the State shall ascertain whether the substitute software is a comparable software product.
 - 2) Operation - The State shall operate the software provided to ascertain that it performs in accordance with the manufacturer's Specifications. If the Contractor provides substitute software, the State shall operate the substitute software to ascertain whether the software performs in accordance with the manufacturer's Specifications of the software originally ordered.

7. Training and Technical Services

a. Training

The Contractor agrees to provide software training as required in the attachment to Rider A. Any extra training to be provided will be as stated in Rider H.

b. Additional Exclusive and Additional Non-Exclusive Technical and Other Personal Services

Additional Exclusive and Additional Non-Exclusive technical and other personal services to be provided by the Contractor to the State, if any, will be as stated in Rider I.

8. Documentation

- a. The Contractor shall provide one (1) copy of all manuals and other printed materials for each unit purchased including updated versions thereof, which are useful and necessary

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to the State in its use of the software provided. Such copy(ies) will be provided at no extra cost to the State. If the software is maintained by the Contractor, all documentation and updates thereto shall be provided at no extra charge to the State

- b. The Contractor agrees to provide to the State extra copies of all such manuals and other printed materials, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or software provided hereunder. The Contractor agrees to provide extra documentation at prices not in excess of charges made by the Contractor to its best customers for similar documentation.

9. Software Warranty

Contractor warrants that all Third-Party Software products and related documentation conform with all applicable Specifications, including, but not limited to, the Specifications of the software publisher/distributor and all Specifications included in this Contract, including any user manual. The Contractor further warrants that the software is compatible with and will operate on the Equipment referenced in Rider B. Also see General Warranty, Rider A, Paragraph 10, and Rider G, Software License Provisions.

10. Software Product Substitution

If a software product is withdrawn from the market and/or a new software product or version is announced by the manufacturer during the Contract period, a substitute/replacement product may be proposed provided that:

- a. The software product meets or exceeds the Contractor's technical Specifications and the performance Specifications of the State included in Rider A, and
- b. The price of the software product is no greater than the price of the software product to be replaced, unless the State agrees in writing that a higher price is commensurate with an increased utility to the State, and
- c. The software product meets or exceeds the Customer In-Use Requirements as stated in the RFP's Administrative Requirements included in Rider A.
- d. Any such software shall be acceptance tested in accordance with Paragraph 6 of this Rider.

Substitution will take place only with the mutual consent of both parties. Such consent will not be unreasonably withheld by the State or the Contractor.

11. Software/Firmware Product Updates

- a. The Contractor agrees to provide to the State supplemental, corrective, or restorative software/firmware updates such as "Service Releases" or "Patches" within thirty (30) calendar days of announcement by the software/firmware manufacturer at no extra cost to the State. The Contractor agrees to apply these updates during scheduled downtime

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allocated for this purpose.

- b. Not later than delivery of such software/firmware updates, the Contractor agrees to provide to the State updated copies of all manuals and other printed materials to reflect the software/firmware updates.

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Cost Table VI-6.C

Software (Other Than CWS/CMS Application) and Training
Purchase/Licensing Minimum Discount Cost Table

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RIDER D

Acceptance Testing Provisions

1. General

The purpose of this Rider is to set forth specific procedures to test the CWS/CMS in connection with (1) Transition-In; (2) System Changes; (3) Moves, Adds, and Changes (MACs), and (4) CWS/CMS Application Releases. The Contractor shall conduct Acceptance Tests of Transition-In, System Changes, and MACs. The State shall conduct Acceptance Tests of CWS/CMS Application Releases, and the Contractor shall support the State in such efforts. The purpose of the Acceptance Tests is to enable the State to determine whether or not to accept the services or goods being tested. "System Changes" includes changes to the CWS/CMS Architecture. "Services" includes all remaining activities required to operate the CWS/CMS Application on the System. "CWS/CMS" includes the entire collection of the CWS/CMS Application, CWS/CMS Architecture, and Services as a single integrated entity.

2. Process

- a. The Contractor shall issue a Certification of Readiness when the CWS/CMS is ready for production use by the State for each of Transition-In, System Changes, MACs, and CWS/CMS Application Releases. The Contractor shall prepare an Acceptance Test Plan for each Acceptance Test depending on the nature and scope of the services or goods being tested. The State will evaluate and determine whether to approve the applicable Acceptance Test Plan. After receiving the Certification of Readiness and approving the Test Plan, the State will schedule Acceptance Tests.
- b. The Contractor shall conduct Acceptance Tests of the CWS/CMS for Transition-In, System Changes, and MACs in two testing phases. The first phase shall consist of a Readiness Test to determine whether the services or goods being tested are ready to undergo testing in an actual production environment. The second phase shall consist of an Operational Test to evaluate the services or goods in the State production environment for the purpose of verifying availability, performance and functionality. The Contractor shall prepare a Test Summary Report at the conclusion of each testing phase. The State will evaluate and determine whether to approve the Test Summary Report.
- c. The State, with the support of the Contractor, will conduct Acceptance Tests of the CWS/CMS Application Releases in two testing phases. The first phase shall consist of a Readiness Test to determine whether the Application Release is ready to undergo acceptance testing in an actual production environment. The second phase shall consist of an Operational Test to evaluate the Application Release in the State production environment for the purpose of verifying availability, performance and functionality. The Contractor shall prepare a Test Summary Report at the conclusion of each testing phase. The State will evaluate and determine whether to approve the Test Summary Report.

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- d. Upon successful completion of the Operational Test and approval of the applicable Operational Test Summary Report, the State will accept the CWS/CMS Transition-In, System Changes, MACs, or CWS/CMS Application Release.
3. Acceptance Tests
- a. CWS/CMS Transition-In Acceptance Tests

- 1) System Readiness Test

The System Readiness Test shall evaluate the readiness of the CWS/CMS Architecture to operate the CWS/CMS Application. The Contractor shall begin, conduct, and complete the System Readiness Test on the dates and times scheduled. The Contractor shall conduct the System Readiness Test in accordance with the System Readiness Test Plan. Upon completion of the System Readiness Test, the Contractor shall submit the System Readiness Test Summary Report to the State. The State will evaluate the System Readiness Test Summary Report and determine whether the completion of the System Readiness Test was successful. If the Contractor fails to complete or unsuccessfully completes the System Readiness Test for reasons outside Contractor's responsibility, the State will reschedule the System Readiness Test. If the Contractor fails to complete or unsuccessfully completes the System Readiness Test for reasons within Contractor's responsibility, the State may reschedule the System Readiness Test and/or exercise rights provided elsewhere in this Contract. Before the Contractor can proceed to statewide operation and begin the CWS/CMS Operational Test, the following must occur:

- a) The Contractor must successfully complete the System Readiness Test; OR

- where the Contractor has unsuccessfully completed the System Readiness Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the System Readiness Test must be approved by the State; and

- b) The System Readiness Test Summary Report must be approved by the State.

- 2) Services Readiness Test

The Contractor shall begin, conduct, and complete the Services Readiness Test on the dates and times scheduled. The Contractor shall conduct the Services Readiness Test in accordance with the Services Readiness Test Plan. Upon completion of the Services Readiness Test, the Contractor shall submit the Services Readiness Test Summary Report to the State. The State will evaluate the Services Readiness Test Summary Report and determine whether the completion of the Services Readiness Test was successful. If the Contractor fails to complete or unsuccessfully completes the Services Readiness Test for reasons outside Contractor's responsibility, the State will reschedule the Services Readiness Test. If the Contractor fails to complete or unsuccessfully completes the Services Readiness Test for reasons within Contractor's responsibility, the State may reschedule the Services

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Readiness Test and/or exercise rights provided elsewhere in this Contract, including without limitation, termination of the Contractor for default. Before the Contractor can proceed to statewide operation and begin the CWS/CMS Operational Test, the following must occur:

- a) The Contractor must successfully complete the Services Readiness Test; OR

where the Contractor has unsuccessfully completed the Services Readiness Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the Services Readiness Test must be approved by the State; and

- b) The Services Readiness Test Summary Report must be approved by the State.

- 3) CWS/CMS Operational Test

The CWS/CMS Operational Test will evaluate the entire CWS/CMS including, but not limited to, the CWS/CMS workstations' application, communications connectivity, System, and Services during statewide production operations. The Contractor shall begin, conduct, and complete the CWS/CMS Operational Test on the dates and times scheduled. The Contractor shall conduct the CWS/CMS Operational Test in accordance with the CWS/CMS Operational Test Plan. Upon completion of the CWS/CMS Operational Test, the Contractor shall submit the CWS/CMS Operational Test Summary Report to the State. The State will evaluate the CWS/CMS Operational Test Summary Report and determine whether the completion of the CWS/CMS Operational Test was successful. If the Contractor fails to complete or unsuccessfully completes the CWS/CMS Operational Test for reasons outside Contractor's responsibility, the State will reschedule the CWS/CMS Operational Test. If the Contractor fails to complete or unsuccessfully completes the CWS/CMS Operational Test for reasons within Contractor's responsibility, the State may reschedule the CWS/CMS Operational Test and/or exercise rights provided elsewhere in this Contract. Before the State will accept the CWS/CMS Transition-In, the following must occur:

- a) The Contractor must successfully complete the CWS/CMS Operational Test; OR

where the Contractor has unsuccessfully completed the CWS/CMS Operational Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the CWS/CMS Operational Test must be approved by the State; and

- b) The CWS/CMS Operational Test Summary Report must be approved by the State.

- b. System Changes Acceptance Test

- 1) System Changes Readiness Test

The Contractor shall begin, conduct, and complete a System Changes Readiness Test on the dates and times scheduled. The Contractor shall conduct the System Changes Readiness Test in accordance with a System Changes Readiness Test Plan. Upon completion of the

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System Changes Readiness Test, the Contractor shall submit a System Changes Readiness Test Summary Report to the State. The State will evaluate the System Changes Readiness Test Summary Report and determine whether the completion of the System Changes Readiness Test was successful. If the Contractor fails to complete or unsuccessfully completes the System Changes Readiness Test for reasons outside Contractor's responsibility, the State will reschedule the System Changes Readiness Test. If the Contractor fails to complete or unsuccessfully completes the System Changes Readiness Test for reasons within Contractor's responsibility, the State may reschedule the System Changes Readiness Test and/or exercise rights provided elsewhere in this Contract. Before the System Changes can proceed to statewide operation and the Contractor begin the System Changes Operational Test, the following must occur:

- a) The Contractor must successfully complete the System Changes Readiness Test; OR

where the Contractor has unsuccessfully completed the System Changes Readiness Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the System Changes Readiness Test must be approved by the State; and

- b) The System Changes Readiness Test Summary Report must be approved by the State.

- 2) System Changes Operational Test

The Contractor shall begin, conduct, and complete a System Changes Operational Test on the dates and times scheduled. The Contractor shall conduct the System Changes Operational Test in accordance with a System Changes Operational Test Plan. Upon completion of the System Changes Operational Test, the Contractor shall submit a System Changes Operational Test Summary Report to the State. The State will evaluate the System Changes Operational Test Summary Report and determine whether the completion of the System Changes Operational Test was successful. If the Contractor fails to complete or unsuccessfully completes the System Changes Operational Test for reasons outside Contractor's responsibility, the State will reschedule the System Changes Operational Test. If the Contractor fails to complete or unsuccessfully completes the System Changes Operational Test for reasons within Contractor's responsibility, the State may reschedule the System Changes Operational Test and/or exercise rights provided elsewhere in this Contract. Before the State will accept the System Changes, the following must occur:

- a) The Contractor must successfully complete the System Changes Operational Test; OR

where the Contractor has unsuccessfully completed the System Changes Operational Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the System Changes Operational Test must be approved by the State; and

- b) The System Changes Operational Test Summary Report must be approved by the State.

- c. Moves, Adds, and Changes (MAC) Acceptance Tests

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1) MAC Readiness Test

The Contractor shall begin, conduct, and complete a MAC Readiness Test on the dates and times scheduled. The Contractor shall conduct the MAC Readiness Test in accordance with a MAC Readiness Test Plan. Upon completion of the MAC Readiness Test, the Contractor shall submit a MAC Readiness Test Summary Report to the State. The State will evaluate the MAC Readiness Test Summary Report and determine whether the completion of the MAC Readiness Test was successful. If the Contractor fails to complete or unsuccessfully completes the MAC Readiness Test for reasons outside Contractor's responsibility, the State will reschedule the MAC Readiness Test. If the Contractor fails to complete or unsuccessfully completes the MAC Readiness Test for reasons within Contractor's responsibility, the State may reschedule the MAC Readiness Test and/or exercise rights provided elsewhere in this Contract. Before the MAC can proceed to operation and the Contractor begin the MAC Operational Test, the following must occur:

a) The Contractor must successfully complete the MAC Readiness Test; OR

where the Contractor has unsuccessfully completed the MAC Readiness Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the MAC Readiness Test must be approved by the State; and

b) The MAC Readiness Test Summary Report must be approved by the State.

2) MAC Operational Test

The Contractor shall begin, conduct, and complete a MAC Operational Test on the dates and times scheduled. The Contractor shall conduct the MAC Operational Test in accordance with a MAC Operational Test Plan. Upon completion of the MAC Operational Test, the Contractor shall submit the MAC Operational Test Summary Report to the State. The State will evaluate the MAC Operational Test Summary Report and determine whether the completion of the MAC Operational Test was successful. If the Contractor fails to complete or unsuccessfully completes the MAC Operational Test for reasons outside Contractor's responsibility, the State will reschedule the MAC Operational Test. If the Contractor fails to complete or unsuccessfully completes the MAC Operational Test for reasons within Contractor's responsibility, the State may reschedule the MAC Operational Test and/or exercise rights provided elsewhere in this Contract. Before the State will accept the MAC, the following must occur:

a) The Contractor must successfully complete the MAC Operational Test; OR

where the Contractor has unsuccessfully completed the MAC Operational Test, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the MAC Operational Test must be approved by the State; and

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- b) The MAC Operational Test Summary Report must be approved by the State.
- d. CWS/CMS Application Release
 - 1) CWS/CMS Application Release Readiness Test

The State will begin, conduct, and complete a CWS/CMS Application Release Readiness Test on the dates and times scheduled in accordance with the CWS/CMS Application Release Readiness Test Plan. Upon completion of the CWS/CMS Application Release Test, the State will provide the CWS/CMS Application Release Test results to the Contractor. The Contractor shall prepare and submit the CWS/CMS Application Release Readiness Test Summary Report to the State. The State will evaluate the CWS/CMS Application Release Readiness Test Summary Report and determine whether the completion of the CWS/CMS Application Release Readiness Test was successful. If the State fails to complete or unsuccessfully completes the CWS/CMS Application Release Test for reasons outside Contractor's responsibility, the State will reschedule the CWS/CMS Application Release Test. If the State fails to complete or unsuccessfully completes the CWS/CMS Application Release Test for reasons within Contractor's responsibility, the State may reschedule the CWS/CMS Application Release Test and/or exercise rights provided elsewhere in this Contract. Before the CWS/CMS Application Release can proceed to operation and the Contractor begin the CWS/CMS Application Release Operational Test, the following must occur:

- a) The State must successfully complete the CWS/CMS Application Release Readiness Test;
OR

where the State has unsuccessfully completed the CWS/CMS Application Release Readiness Test for reasons within Contractor's responsibility, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the CWS/CMS Application Release Readiness Test must be approved by the State; and

- b) The CWS/CMS Application Release Readiness Test Summary Report must be approved by the State.
- 2) CWS/CMS Application Release Operational Test

The State will begin, conduct, and complete the CWS/CMS Application Release Operational Test on the dates and times scheduled in accordance with the CWS/CMS Application Release Test Plan. Upon completion of the CWS/CMS Application Release Operational Test, the State will provide CWS/CMS Application Release Operational Test results to the Contractor. The Contractor shall prepare and submit a CWS/CMS Application Release Operational Test Summary Report to the State. The State shall evaluate the CWS/CMS Application Release Operational Test Summary Report and determine whether the completion of the CWS/CMS Application Release Operational Test was successful. If the State fails to complete or unsuccessfully completes the CWS/CMS Application Release Operational Test for reasons outside Contractor's responsibility, the State will reschedule the CWS/CMS Application Release Operational Test. If the State fails to complete or unsuccessfully completes the

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CWS/CMS Application Release Operational Test for reasons within Contractor's responsibility, the State may reschedule the CWS/CMS Application Release Operational Test and/or exercise rights provided elsewhere in this Contract. Before the State will accept the CWS/CMS Application Release, the following must occur:

- a) The State must successfully complete the CWS/CMS Application Release Operational Test; OR

where the State has unsuccessfully completed the CWS/CMS Application Release Operational Test for reasons within Contractor's responsibility, the corrective actions or alternative solutions recommended by the Contractor to remediate the variances produced in the course of the CWS/CMS Application Release Operational Test must be approved by the State; and

- b) The CWS/CMS Application Release Operational Test Summary Report must be approved by the State.

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RIDER E

Lease and/or Installment Purchase Provisions

1. General

The State reserves the right to select the form of payment for the procurement of all goods referenced in Riders B and C, be it either an outright purchase with payment rendered directly by the State to the Contractor, or an installment purchase or financed lease via the State of California's financial marketplace – GS \$Mart™ and/or Lease \$Mart™. If payment is via the financial marketplace, the Contractor will receive payment for State-accepted assets from the Lender or Lessor, who will, in turn, receive reoccurring payments by the State from budgeted fund appropriations. Under no circumstances is the use of the financial marketplace allowed to incur extra debt to the State of California or its agencies.

Contractors may offer a package deal for assets and financing/leasing that may be a better value than splitting the payment method from the asset selection; this package will be considered on a comparable basis with the financial marketplace at the time the goods are purchased.

If the State chooses either financing or leasing as the payment method for the assets, the current terms and conditions of the appropriate program, either GS \$Mart™ and/or Lease \$Mart™, will be incorporated into this Contract. Both plans are found on the Department of General Services, Procurement Division's Web site at www.pd.dgs.ca.gov.

2. Local Government Use

Current available financing plans are specifically tailored for the State of California contracts, the State's financial marketplace may be tailored by local governments for their use. The local government should change all references from "the State of California" to the legal name of the entity, and have their appropriate legal counsel review the applicable program's terms and conditions as well as the closing documents (all of which is found on the Department of General Services, Procurement Division's Web site).

All rates and lease factors quoted in both GS \$Mart™ and Lease \$Mart™ are supplied by participating Lenders and Lessors for State of California agencies only. Other governmental jurisdictions may have different credit/bond ratings and, hence, warrant different rates. If either program is used by a local government, their rates will adjust to the local government's credit and/or bond rating.

Some of the areas of concern for the local governments may include:

- Authority to sign a UCC-1 Financing Statement - this gives the lending institution a security interest in the equipment (applicable to a GS \$Mart™ transaction)
- Signature authority to enter the financing contract; and
- When title passes to the local government (applicable to a GS \$Mart™ transaction)

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Typically, minimum procurement thresholds are required to conduct business within the State's financial marketplace; ideally, the higher transaction amount equates to a better interest rate and lower finance charge.

For the purposes of this Contract, those thresholds have been lowered from the standard minimum transaction amount as follows:

- GS \$Mart™ Program
Minimum amount to be financed (excludes finance charges): \$20,000 per transaction
(dropped from standard \$100,000 per transaction)
- Lease \$Mart™ Program
Minimum amount to be financed (excludes lease charges): \$20,000 per transaction
(dropped from standard \$50,000 per transaction)

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RIDER F

Maintenance Provisions

1. General

- a. The purpose of this Rider is to prescribe the responsibilities of the Contractor for maintenance of all new or existing local Equipment and Software for which the State has selected the Contractor to provide maintenance (see Rider B, Rider C, and Appendix B attached to Rider A).
- b. Equipment and operating software shall be maintained in good operating condition and in accordance with all applicable Specifications.

2. Maintenance Coverage

a. Period of maintenance coverage:

- 1) The State may designate for any site a period or periods of maintenance coverage based on each site's operational needs. The period or periods of maintenance coverage required, i.e., each site's Critical Business Hours, may be as high as 24-hour, 7 days a week. Appendix D, attached to Rider A, identifies each site's Critical Business Hours.
- 2) The State may change any site's designated Critical Business Hours for maintenance coverage by giving Contractor fifteen (15) days prior written notice.

b. Preventive Maintenance (Scheduled)

The Contractor shall provide Preventive Maintenance both within and outside of any site's Critical Business Hours as requested by the State. There will be no extra charge for Preventive Maintenance that is performed within a site's Critical Business Hours. If the State requests that Preventive Maintenance be performed outside a site's Critical Business Hours, there may be an extra charge to the State as referenced in Riders B and C.

c. Remedial Maintenance (Unscheduled)

- 1) Remedial maintenance shall be performed after the State notifies the Contractor that it is experiencing a problem with CWS/CMS, and it is determined that the problem is with Equipment or Software covered under the maintenance provisions of this Contract.
- 2) The Contractor shall respond to problems reported through its Help Desk as the designated point of contact, and will be responsible for notifying and tasking its maintenance personnel or agents. (For details regarding the Contractor's Help Desk service, see RFP Section IV.C.3.e and its subsections.)

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- 3) Remedial Maintenance for any CWS/CMS problem reported to the Contractor's Help Desk within any site's Critical Business Hours will be included in the monthly maintenance charge for the site at the basic Service Level 3 at no extra charge. For any site, the State may upgrade Remedial Maintenance response for Equipment problems to the more rapid response of Service Level 2 or the most rapid response of Service Level 1. (For a definition of Service Levels and other terms, refer to the Glossary, RFP Appendix A.)
 - 4) Any Remedial Maintenance performed outside of a site's Critical Business Hours at the Contractor's discretion, without being requested by the State, will be included in the monthly maintenance charge for the site at the basic Service Level 3 at no extra charge.
 - 5) Any travel expenses for Remedial Maintenance performed within a site's Critical Business Hours will be included in the monthly maintenance charge for the site at the basic Service Level 3 at no extra charge.
 - 6) Any Remedial Maintenance performed outside a site's Critical Business Hours may incur an extra charge, however, only to the extent as proposed and as referenced in Riders B and C.
 - 7) If the State requests Remedial Maintenance to be performed at a time which is outside a site's Critical Business Hours, the service will be furnished at the applicable rates as referenced in Riders B and C. Travel expenses for Remedial Maintenance performed outside a site's Critical Business Hours at the State's request are billable as referenced in Riders B and C.
 - 8) There shall be no extra maintenance charge for:
 - a) Remedial Maintenance during a site's Critical Business Hours unless the Remedial Maintenance is due to the fault or negligence of the State.
 - b) Time spent by maintenance personnel after arrival at a site awaiting the arrival of other maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.
 - c) Remedial Maintenance required because the scheduled Preventive Maintenance preceding the malfunction had not been performed, unless the Contractor was not provided access to the Equipment due to the security regulations of the site.
 - d) Remedial Maintenance for a malfunction which occurred and was serviced within the previous forty-eight (48) hours, i.e., a "call back".
3. Maintenance Response Times
- a. The Contractor shall respond to problems reported by the State in accordance with the time frames identified in the Technical Requirements (RFP Section IV, tables 4-1 through 4-3) and the Contractor's response thereto.
 - b. Response times for Functional Restoration as well as Problem Resolution are based on the cause of the problem, whether hardware- or software-based, and the Severity Level. See specific

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definitions included in the Glossary (RFP Appendix A) and time frames identified in the Technical Requirements (RFP Section IV, tables 4-1 through 4-3) and the Contractor's response thereto.

- c. Note that basic Remedial Maintenance for Equipment shall be provided by the Contractor for all sites at Service Level 3. However, on a site-by-site basis the State may elect to upgrade response time for Equipment problems to either Service Level 2 or Service Level 1 requiring more rapid Functional Restoration. See specific response times and definitions included in the Technical Requirements (RFP Section IV, Tables 4-1 through 4-3) and the Contractor's response thereto.

4. Exclusions from Maintenance Coverage

Maintenance service does not include:

- a. Electrical work external to the Equipment or maintenance of accessories, alterations, attachments, or other devices not referenced in Rider B.
- b. Repair of damage or increase in service time caused by: accident; disaster, which shall include, but not be limited to, fire, flood, water, wind, and lightning; transportation; neglect or misuse; alterations, which shall include, but not be limited to, any deviation from Contractor's physical, mechanical, or electrical machine design; attachments (refer to Rider B).
- c. Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate Contractor Installation Manual—Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air conditioning or humidity control).
- d. Except as specified in the Rider B, Paragraph 13 Supplies, furnishing supplies or accessories; painting or refinishing the machines or furnishing material therefore; inspecting machines altered by other than Contractor, making specification changes or performing services connected with the relocation of machines; or adding or removing accessories, attachments or other devices.
- e. Such service which is impractical for Contractor to render because of alterations in the machines or their connection by mechanical or electrical means to another machine device.
- f. Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies or materials not meeting Specifications for such supplies or materials, provided applicable Specifications have been furnished to the State.
- g. Repair of damage or increase in service time caused by conversion from one Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than the Contractor, unless expressly allowed elsewhere in this Contract.
- h. Service time to perform Engineering Changes as set forth in Paragraph 7.a of this Rider.
- i. Repair or maintenance by Contractor that is required to restore such Equipment to proper operating condition after any person other than Contractor's employee had performed maintenance or otherwise repaired an item of Equipment, unless expressly allowed elsewhere in this Contract. An extra charge for such repair or maintenance shall be at Contractor's applicable

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time and material rates and terms listed in Rider I.

5. Responsibilities of the Contractor

- a. The Contractor shall provide labor, parts, materials, and transportation to maintain the Equipment and software in compliance with the Equipment manufacturer's and, as appropriate, the software provider's Specifications during the term of the Contract.
- b. Maintenance shall be available from the Contractor at any site twenty-four (24) hours a day, seven (7) days a week.
- c. The Contractor agrees to provide maintenance coverage during periods selected for each site by the State to keep Equipment operating in accordance with the Specifications. This maintenance service includes:
 - 1) Scheduled preventive maintenance based upon the specific needs of the individual machines as determined by manufacturer.
 - 2) Unscheduled, on-call remedial maintenance, including lubrication, adjustments, and replacement of maintenance parts deemed necessary by the Contractor or to repair defects or failures to operate in accordance with Specifications.
- d. The Contractor shall specify in writing the frequency and duration of preventive maintenance for the Equipment in Rider B. Preventive (scheduled) Maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor, which is consistent with the operating requirements of the State, and which is based upon the Preventive Maintenance Specifications for the Equipment as determined by the manufacturer.
- e. Remedial maintenance shall be commenced promptly after notification, and the Contractor shall always be responsive to the maintenance requirements of the State according to the provisions of this Rider. For this purpose, Contractor shall have full and free access to the machines subject to the security regulations of the State.
- f. When Contractor maintenance staff responds to a remedial maintenance call, and the machine malfunction has not been diagnosed and repair begun within two (2) hours from the time of arrival of the Contractor maintenance staff, the Contractor will escalate the problem to a Contractor specialist with unique training and/or experience who specializes in providing assistance and/or repair expertise when a service call is particularly difficult. In the event that two (2) more hours elapse from the time of arrival of the Contractor specialist and the machine's malfunction has not been diagnosed and repair begun, the Contractor will escalate the problem to a Contractor expert whose geographic responsibilities normally include multiple Field Engineering Branch Offices and who has received in-depth specialized training and experience and who possesses extensive diagnostic ability specifically designed to assist on unusually complex problems. In any event, the Contractor will assign adequate support for analysis and repair of the problem to provide Functional Restoration and Problem Resolution.
- g. In the event that a malfunctioning component has a purchase price as specified in Rider B of less

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than \$20,000 and Functional Restoration has not been achieved within the allowable time frame, the Contractor shall restore service immediately by utilizing replacement Equipment. The replacement Equipment is to remain in place until the malfunctioning component has been repaired and can be returned to service at a time mutually agreeable to the State and the Contractor. The Contractor shall provide written notification of this temporary replacement including model and serial numbers of the Equipment being replaced and the temporary Equipment being installed.

- h. Equipment which fails to function in the manner for which it was designed and contracted for such that the CWS/CMS operation at any site is adversely affected three (3) times in any sixty (60) day period, shall be replaced at the request of the State. Before requesting replacement the State will attempt to satisfactorily resolve the problem with the Contractor. The State will be the sole judge as to the adverse impact upon the programs of the State of nonfunctioning Equipment requested for replacement; however, the State shall not act in an arbitrary or capricious manner. The Contractor must provide the State with written confirmation of all permanently replaced Equipment including model and serial numbers of the Equipment being replaced and the Equipment being installed.
- i. Replacement parts will be furnished by the Contractor and will be new when used in covered equipment. Replaced parts become the property of the Contractor.

6. Responsibilities of the State

- a. Unless mutually agreed on by the Contractor and the State, the State will not perform maintenance or attempt repairs to the Equipment while such Equipment is under the purview of this Rider.
- b. Subject to the security regulations of any site, the Contractor shall have access to Equipment to provide service thereon.
- c. The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the Contractor's published Specifications for the Equipment referenced on Rider B.

7. Engineering Changes

- a. Engineering Changes to local Equipment and Software for which the State has selected the Contractor to provide maintenance will be performed only by mutual agreement of the State and the Contractor. Refer to Rider I for rates for service time and materials required to perform Engineering Changes.
- b. When there is a difference between the time the Equipment to be modified is scheduled (by mutual agreement) to be returned to service and the time that the Equipment is actually returned to service, the Contractor shall grant a credit to the State for each hour the Equipment was not operable starting with the first hour after the Equipment was scheduled to be returned to active service. For each hour such credit shall be in the amount of 1/20th of the basic monthly lease rates and monthly maintenance rates for each unit of Equipment which is inoperable as a result of the modification. The number of inoperable hours shall be adjusted up to the nearest whole or half

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hour. These hours shall also be considered downtime.

8. Maintenance of Relocated Equipment

- a. In the event the Equipment being maintained under the terms of this Rider is relocated to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location.
- b. The State agrees to pay all costs that are caused by the State and incidental to any relocation at the rates as referenced in Riders B and C.

9. Maintenance Charges

- a. The monthly maintenance charges described in Rider B include all maintenance costs for new or existing local Equipment and Software for which the State has selected the Contractor to provide maintenance, and the State will pay no extra charges unless specifically set forth in this Rider.
- b. Maintenance charges for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable Total Monthly Maintenance Charge, as referenced in Rider B, for each day maintenance is provided.
- c. Other services provided by the Contractor to the State (including but not limited to activities relating to pre-installation planning, inspections, relocation of machines, engineering changes and altered programming), at no extra charge or at Contractor's rates for time and materials (listed in Rider I), in connection with any Equipment or software supplied under this Contract, shall be subject to the terms and conditions of this Contract unless such activities are governed by another written Contract between the State and the Contractor.
- d. Maintenance rates shall be firm for the Contract period subject to a maximum annual maintenance escalation as referenced in Riders B and C.

10. Maintenance Credit for Inoperable Equipment

- a. The Contractor shall grant a credit proportionate to the maintenance charge on Equipment referenced in Rider B when the Equipment is inoperable, that is, when the Equipment is not restored functionally within the applicable time standards and/or the problem is not resolved within the applicable time standards from the time the State has notified the Contractor that the Equipment was inoperable, provided (1) the Equipment became inoperable through no fault of the State, and (2) the inoperability was attributable to Equipment failure.
- b. Contractor shall grant a credit to the State for each scheduled work hour in the amount of 1/60 of the total monthly maintenance charges for the inoperable Equipment.

11. Termination of Maintenance

- a. For purchased Equipment, the State may terminate maintenance coverage upon providing written notice. Extra charges may apply in accordance with Article 1, Paragraph 11, Termination for the

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Convenience of the State, and Rider E, Lease and/or Installment Purchase Provisions.

- b. The State may terminate maintenance coverage for any machine upon providing written notice. Extra charges may apply in accordance with Article 1, Paragraph 11, Termination for the Convenience of the State, and Rider E, Lease and/or Installment Purchase Provisions.

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RIDER G

Software License Provisions

1. License Grant

- a. Subject to the provisions of this Contract including all Riders hereto, Contractor hereby grants to the State and the State hereby accepts from Contractor a nonexclusive, perpetual, irrevocable license to use the Software Products referenced in Rider B and C.
- b. The license granted above authorizes the State to use the Software Products in machine-readable form on the computer system. Said computer system and its associated units (collectively referred to as "CPU") are designated in Rider A (RFP Appendix B) and Rider B, provided that if any CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation. By prior written notice, the State may redesignate the CPU on which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.
- c. The State may use the Software Products in the conduct of its own business, and any division thereof.

2. Maintenance

- a. The correction of any malfunctions in any Software Products which may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without extra charge during the Contract period. Suspected malfunctions discovered by the State in the Software Products will be handled by the following procedure:
 - 1) Malfunctions in Software Products as verified by Contractor will be corrected by providing a new copy of said Software Products (or of the affected portions) in machine-readable form.
 - 2) The Contractor shall promptly correct Software Product malfunctions.
- b. Contractor will isolate and correct malfunctions caused by the Equipment or operating software.
- c. If Contractor is called upon by the State to correct a malfunction caused by State negligence, modification by State, State supplied data, machine or operator failure, Contractor reserves the right to charge State for such services per the time and material rates listed in Rider I.

3. Right to Copy or Modify

- a. Any Software Product provided by Contractor in machine readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, for

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use by the State to perform benchmark tests, for archival or emergency backup or restart purposes, to replace a worn copy, to understand the content of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than three (3) printed copies and five (5) machine-readable copies will be in existence under this Contract at any one time without prior written consent from Contractor, such consent not to be unreasonably withheld. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.

- b. The State agrees to keep any such copies and the original at mutually designated State locations, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.
- c. The State may modify any Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Rider.
- d. The State agrees to reproduce and include the Contractor's copyright or other proprietary notice on any copies, in whole or in part, in any form, including partial copies of modifications, or Software Products furnished under this Contract.

4. Protection of Software Product

- a. State agrees that all Software Products furnished hereunder, appropriately marked or identified as owned by the Contractor or licensed to the State through the Contractor, are provided for the sole use of the State and will be held in confidence. All data owned by the Contractor shall remain the property of the Contractor. The State will not provide or otherwise make available any Software Products provided by the Contractor in any form without Contractor's prior written consent except to State employees, State contractors obligated to protect the confidentiality of the Software Products, Contractor employees or other persons during the period they are on the premises of the State for purposes specifically related to the use of the program of the State.
- b. The State will insure, prior to disposing of any media, that any Software Products contained thereon have been erased or otherwise destroyed.
- c. The State agrees that it will take appropriate action by instruction, contract, or otherwise with its employees or other persons permitted access to Software Products and/or materials to satisfy its obligations under this Rider with respect to use, copying, modification and protection and security of Software Products and materials.

5. Future Releases

If improved versions of this Software Product are developed by the Contractor or manufacturer (other than those described in Contractor's technical Specifications), and are made available to other licensees, they will be made available to the State per the terms of Rider C, Paragraph 10, Software Product Substitution.

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RIDER H

All training requirements have been consolidated in RFP Section IV.C.5.d

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RIDER I

Scope of Services Pricing and Allied Information (Guaranteed, Additional Exclusive, and Additional Non-Exclusive)

1. General

- a. The purpose of this Rider is to define the Guaranteed, Additional Exclusive, and Additional Non-Exclusive services and support of CWS/CMS as defined in Section IV of the RFP, attached to Rider A, and to identify the rates therefor.
- b. The Contractor shall perform the services necessary for the maintenance and operation of CWS/CMS, a Guaranteed service, as defined in the attachments to Rider A, at the rate(s) identified in this Rider in Cost Tables VI-2A. The Contractor shall provide in an attachment to this cost table a clear description of the pricing components that make up the rate(s) and a definition of and the methodology behind the pricing algorithm(s) used to develop the Contractor's rate(s).
- c. To the extent that Additional Exclusive or Additional Non-Exclusive work may be accomplished that is within the Contract scope but not foreseen at the time this Contract is executed, a statement of work called a Work Authorization, as described in this Rider, will be the means for defining and authorizing such unanticipated work. The fixed price for such work shall be based on the applicable rates identified in this Rider. Each completed Work Authorization shall be incorporated as a Schedule to this Contract. The combined total value of all Work Authorizations shall not exceed a maximum of ten percent (10%) of the value of the fixed price tasks of this Contract.
- d. To the extent that Additional Exclusive work must be accomplished that is within the Contract scope and foreseen in general but not definitized at the time this Contract is executed, a statement of work called a Work Order, as described in this Rider, will be the means for defining and authorizing such anticipated work. The fixed price for such work shall be based on the applicable rates identified in this Rider. Each completed Work Order shall be incorporated as a Schedule to this Contract. The total value of any single Work Order or combination of multiple Work Orders related to a specific task or scope of work shall not exceed the value foreseen and identified in this Contract for that same task or scope of work.
- e. Contractor shall not be authorized to commence performance of service per this Rider as described in any statement of work until written approval of the statement of work has been obtained. Any performance of service that is commenced prior to both the State's Project Executive and the Contractor's Project Executive signing the statement of work shall be considered voluntary on the part of the Contractor.

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2. Contractor Responsibilities

- a. The Contractor agrees that the Contractor will perform the services for which the Contractor is responsible, that the Contractor will accomplish the services in the manner and in the time stated in the appropriate statement of work, and that the Contractor will provide the deliverable(s) as required including all relevant documentation or modification to existing documentation, as appropriate.
- b. Each statement of work will be considered complete when the completion criteria stated therein are met.
- c. Any special requirements identified by the Contractor (e.g., reprographic services, computer time, key data entry, travel and per diem, etc.) shall be preauthorized by the State and identified in each statement of work.

3. Control and Supervision

The services provided by the Contractor shall be under the control, management, and supervision of the Contractor.

4. Personnel

- a. If required by the State, Contractor personnel shall perform their duties on the premises of the State, during the State 's regular work days and normal work hours.
- b. Contractor shall make available to the State technically competent personnel for the purpose of providing the services prescribed in this Rider. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, the Contractor shall promptly replace the disapproved staff with qualified staff, with the replacement staff subject to the State's prior approval.
- c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however, subject to Subparagraph b above, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with or diminish the performance of services under this Contract.

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5. Responsibilities of the State

- a. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such assistance and services as is specifically set forth in each statement of work.
- b. Delay or failure by the State to fulfill the above described responsibilities, such that the Contractor is prevented from performing in accordance with this Contract, may result in extra costs to the Contractor and deviations from previously agreed upon work schedules. Delay or failure by Contractor to fulfill its responsibilities, such that the State is prevented from performing in accordance with this Contract, may result in extra costs to the State and deviations from previously agreed upon work schedules. The State will review changes recommended by Contractor to the work schedule and agree to such changes to the extent they are appropriate in the State's reasonable judgment. Should the Contractor determine that a delay exists or is probable, the Contractor will notify the State in writing immediately. Communications should be addressed to the State's Project Executive or designee.
- c. The State's Project Executive is responsible for ensuring the performance of State personnel under this Contract. The Contractor's Project Executive is responsible for ensuring the performance of personnel of Contractor and its subcontractors under the Contract.

6. Unanticipated Tasks

- a. In the event that Additional Exclusive or Additional Non-Exclusive work must be performed which was wholly unanticipated (and was not identified in either the State's solicitation document or the Contractor's proposal submitted in response hereto but which in the written opinion of both parties and the US Department of Health and Human Services is necessary to the successful accomplishment of the general scope of work outlined), the procedures outlined in this clause will be employed.
- b. For each item of unanticipated work, a Work Authorization will be prepared in accordance with the directions provided herein and will be incorporated as a Schedule to this Contract. Each Work Authorization may be amended, as appropriate, by written mutual agreement.
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization added as a Schedule to this Contract. Such Work Authorization shall in no way constitute a contract and commitment other than as provided pursuant to this Contract.
- d. Each Work Authorization shall identify the following: (1) the purpose, objective, or goals to be undertaken by the Contractor, in a detailed statement, (2) the tasks necessary to accomplish the goals of the Work Authorization and, as appropriate, related costs, (3) the deliverables, including all relevant documentation or modification to existing

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documentation, (4) a time schedule for the provisions of these deliverables, (5) the completion criteria for the work to be performed, (6) the State's acceptance criteria for the deliverables, (7) the State's responsibilities, (8) the Contractor's responsibilities, (9) the Contractor's personnel to be assigned, (10) the job classification or approximate skill level of such personnel, (11) the quantity(ies) of labor-hours by job classification or skill level, (12) the quantity(ies) of deliverables, (13) the Contractor's unit price(s) per labor hour or deliverable, (14) the payment terms associated with each deliverable or group of deliverables, and (15) the Contractor's total fixed price of the Work Authorization.

- e. For the purposes of this Contract, the term "Contractor's unit price(s)" shall be defined as either of the following: (1) pricing for goods or services already included in this Contract, or (2) pricing for new goods or services that were not identified in the State's solicitation document, the Contractor's proposal submitted in response thereto, or any subsequent amendment made to this Contract; any new pricing data shall be analyzed by the State to ensure that it is the best attainable under the circumstances.
- f. All Work Authorizations must be in writing prior to beginning work, signed by the parties, their designees or successors and approved by the Department of General Services prior to the Contractor beginning work.
- g. The State has the right to require the Contractor to stop or suspend work on any Work Authorization pursuant to the terms of the following: Article 1, Paragraph 3, Unilateral Changes; Article 1, Paragraph 9, Termination for Non-Availability of State Funds; Article 1, Paragraph 10, Termination for Non-Availability of Federal Funds; Article 1, Paragraph 11, Termination for the Convenience of the State; and Article 1, Paragraph 13, Stop Work.
- h. The Contractor shall not be required to provide any work until properly authorized by this Contract.
- i. Prices for Work Authorizations proposed by the Contractor shall remain firm for a period of 180 days following their submission by the Contractor to the State. The State will not pay for the Contractor's assessment of the costs of performing Work Authorizations.
- j. Payments made pursuant to the above Work Authorizations shall only be for deliverables which have been accepted by the State. Any phased or progress payments shall be based on the actual delivery by the Contractor and acceptance of the deliverables by the State.
- k. No Work Authorization's time schedule may exceed the termination date of this Contract.
- l. The parties acknowledge and agree that all Work Authorizations requested by the State in a total amount for such Work Authorizations over \$_____ per State fiscal year are subject to the prior approval of HHSDC's control agencies.

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7. Anticipated Undefinitized Tasks

- a. In the event that Additional Exclusive work must be performed which does not constitute an “unanticipated task”, as referred to in Paragraph 6 above, but which was identified although not definitized in the Contract or an amendment thereto, the procedures outlined in this clause will be employed.
- b. For each item of work, a Work Order will be prepared in accordance with the directions provided herein and will be incorporated as a Schedule to this Contract. Each Work Order may be amended, as appropriate, by written mutual agreement
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in full force with the inclusion of any such Work Order added as a Schedule to this Contract. Such Work Order shall in no way constitute a contract and commitment other than as provided pursuant to this Contract.
- d. Each Work Order shall identify the following: (1) the purpose, objective, or goals to be undertaken by the Contractor, in a detailed statement, (2) the tasks necessary to accomplish the goals of the Work Order and, as appropriate, related costs, (3) the deliverables, including all relevant documentation or modification to existing documentation, (4) a time schedule for the provision of these deliverables, (5) the completion criteria for the work to be performed, (6) the State’s acceptance criteria for the deliverables, (7) the State’s responsibilities, (8) the Contractor’s responsibilities, (9) the Contractor’s personnel to be assigned, (10) the job classification or approximate skill level of such personnel, (11) the quantity(ies) of labor-hours by job classification or skill level, (12) the quantity(ies) of deliverables, (13) the Contractor’s unit price(s) per labor category or deliverable, (14) the payment terms associated with each deliverable or group of deliverables, and (15) the total fixed price of the Work Order.
- e. For the purposes of this Contract, the term “Contractor’s unit price(s)” shall be defined as either of the following: (1) pricing for goods or services already included in this Contract; or (2) pricing for new goods or services that were not identified in the State’s solicitation document, the Contractor’s proposal submitted in response thereto, or any subsequent amendment made to this Contract; any new pricing data shall be analyzed by the State to ensure that it is the best attainable under the circumstances.
- f. All Work Orders and amendments thereto must be in writing, signed by the parties, their designees or successors and approved by the Department of General Services prior to the Contractor beginning work.
- g. The State has the right to require the Contractor to stop or suspend work on any Work Order pursuant to the terms of: Article 1, Paragraph 3, Unilateral Changes; Article 1, Paragraph 9, Termination for Non-Availability of State Funds; Article 1, Paragraph 10, Termination for Non-Availability of Federal Funds; Article 1, Paragraph 11, Termination for the Convenience of the State; and Article 1, Paragraph 13, Stop Work.
- h. The Contractor shall not be required to provide any work until properly authorized by this

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Contract.

- i. Prices for Work Orders proposed by the Contractor will remain firm for a period of 180 days following their submission by the Contractor to the State. The State will not pay for the Contractor's assessment of the costs of performing Work Orders.
- j. Notwithstanding Paragraph 9 below, payment made pursuant to Work Orders shall only be for deliverables which have been accepted by the State. Any phased or progress payments shall be based on the actual delivery by the Contractor and acceptance of the deliverables by the State.
- k. No Work Order's time schedule may exceed the termination date of this Contract.

8. Performance Bond

Pursuant to California Public Contract Code Section 12112, a faithful performance bond (or equivalent surety) will be required in the amount of at least one-half of the value of a Work Authorization, Work Order or Change Order whenever the scope of work meets all of the following criteria:

- a. the goods or services will be manufactured or performed especially for the State;
- b. the goods or services will not be suitable for sale to others;
- c. the work will be performed at the Contractor's shop or plant; and
- d. payment for the goods or services will be made by progress payment with a minimum of ten (10) percent withheld until final delivery and acceptance by the State of all the goods or services within the scope of work.

9. Invoicing and Payment for Services

- a. Contractor shall submit reports and invoices and receive payment for accepted deliverables, including all relevant documentation or modification to existing documentation, as appropriate, as specified in Rider A.
- b. During the execution of each Work Authorization or Work Order which involves the delivery to the State of identified deliverable items according to the appropriate State-approved project plan(s), the Contractor may submit monthly to the State invoices reflecting a pro-rata cost, determined on the basis of the lesser of either:
 - 1) The number of deliverables provided to the State divided by the total number of deliverables required to be delivered to the State, less twenty-five percent (25%), less any amounts previously invoiced; or
 - 2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less twenty-five percent

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(25%), less any amounts previously invoiced.

- c. For any Work Authorization or Work Order which does not involve delivery to the State of identified deliverable items, but which is of a continuing nature according to the State-approved appropriate project plan(s), the Contractor may submit invoices reflecting a pro-rata cost of the Work Authorization or Work Order, less ten percent (10%), less any amount previously invoiced. Actual progress payment amounts for any such Work Authorization or Work Order must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress identified in the Work Authorization or Work order and reflected in written reports submitted with the invoices.
- d. Progress payments will only be allowed for any such Work Authorization or Work Order when preauthorized by the State in writing and when the Contractor has furnished to the State a faithful performance bond in the amount of one-half of the value of the appropriate Work Authorization or Work Order (refer to PCC 12112).
- e. Upon completion of a Work Authorization or Work Order to the satisfaction of the State, the full charge for the Work Authorization or Work Order, less amounts previously invoiced to the State in accordance with Subparagraphs b and c above, may be submitted for payment.
- f. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the fixed price amount of the Work Authorization or Work Order, as appropriate, with the balance to be invoiced upon satisfactory completion of the Work Authorization or Work Order, as appropriate.
- g. The consideration to be paid the Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in performance hereof, including travel and per diem, unless otherwise expressly so provided.

10. Consulting Contractor Evaluation

In accordance with the Public Contract Code Sections 10367 and 10369 et seq., a Contractor performance evaluation form shall be submitted to the Department of General Services by the contracting agency following the completion of any consulting project valued at \$5,000 or more if the Contractor's performance is found to have been unsatisfactory. The contracting agency shall provide a copy of the evaluation form to the Contractor who may submit a rebuttal to the negative evaluation. The evaluation and the Contractor's rebuttal, if submitted, shall remain on file with the contracting agency and DGS and are not considered public records.

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Cost Table VI-1 |

Transition In Costs |

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Cost Table VI-2.A

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Operations Services Cost

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Cost Table VI-4.A

CWS/CMS User and Related Training Costs per Session
at Contractor Facilities

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Cost Table VI-4.B

CWS/CMS User and Related Training Costs per Session
at State Facilities

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Cost Table VI-4.C

Additional CWS/CMS User and Related Training Cost per Student
at Contractor Facilities

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Cost Table VI-4.D

Additional CWS/CMS User and Related Training Cost per Student
at State Facilities

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Cost Table VI-6.D

Dedicated County Package of Local Services

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Cost Table VI-6.E

Additional Local Services
(9 Pages Total)

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Cost Table VI-6.F

Equipment (and Operating Software) Monthly Maintenance Cost
by Service Level, Year, and Zone for Service Level 3
and Differential Costs for Upgrades to Service Levels 2 and 1

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Cost Table VI-6.G

Software (COTS and Other Non-Operating Software) Monthly Maintenance Cost
by Service Level, Year, and Zone for Service Level 3
and Differential Costs for Upgrades to Service Levels 2 and 1

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Cost Table VI-8

Master Labor Rate Table (7 Year Perspective) – Hourly Rates

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